

FIFTY-FIFTH DAY
(Thursday, April 21, 1983)

The Senate met at 11:00 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

A quorum was announced present.

The Reverend Joseph Phelps, Highland Park Baptist Church, Austin, offered the invocation as follows:

Our Father, as we bow to ask for help and counsel from above, we know that You will not do it all. We are aware that You work first and foremost through people. We pray that this truth might burn itself into our consciousness and be at the forefront of all our day's deliberations—that You will work through us if but we are willing.

Father, we have been given minds to think. Let us not quit until we have thought and thought hard about what is just and right. Guide us to the just and right, and grant us courage to act on what we find.

In the name of our Strong Example—Jesus the Lord. Amen.

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE

House Chamber
April 21, 1983

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 150, Congratulating Sarah Etta Willard.

H.C.R. 155, In memory of Frank Joseph.

H.C.R. 164, Congratulating Irving Louis Friedman.

H.C.R. 167, Congratulating the Ennis High School girl's basketball team.

H.C.R. 168, Commending the Waxahachie High School boy's basketball team.

H.C.R. 169, Commending the Maypearl High School boy's basketball team.

S.C.R. 60, Congratulating the Kroger Company.

S.C.R. 20, Requesting Department of Human Resources to apply for Medicare/Medicaid waiver to permit funds for pilot diabetes prevention and education programs.

S.C.R. 44, Granting Joy Ann Babb permission to sue the State.

H.C.R. 72, Granting Ron and Loretha Stanley, parents of Lou Jean Stanley permission to sue Burleson Independent School District.

H.C.R. 108, Granting Motor Express, Inc., of Pearland permission to sue the Railroad Commission of Texas.

H.C.R. 123, Memorializing Congress to repeal IRS regulation requiring restaurants to withhold income on estimated tips.

H.C.R. 137, Granting Prudential Insurance Company permission to sue the State of Texas and the State Board of Insurance.

H.C.R. 138, Granting John Ferrell, doing business as Dalworth Company, permission to sue the State of Texas and the State Department of Highways and Public Transportation.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate the following enrolled resolutions:

H.C.R. 171

H.C.R. 136

REPORTS OF STANDING COMMITTEES

Senator Jones submitted the following report for the Committee on Finance:

S.B. 738

S.B. 844

S.B. 849

S.B. 974

S.B. 975

S.B. 977

S.B. 978

S.B. 982

S.B. 980 (Amended)

S.B. 981 (Amended)

S.B. 1274

S.B. 1256

S.B. 1143

S.B. 1329

C.S.S.B. 821 (Read first time)

Senator Farabee submitted the following report for the Committee on State Affairs:

S.B. 472

H.B. 2 (Amended)

H.J.R. 30

H.J.R. 1

S.B. 1066

S.B. 1164

S.B. 1001

C.S.S.B. 1298 (Read first time)

Senator Parmer, Acting Chairman, submitted the following report for the Committee on Health and Human Resources:

S.C.R. 72
S.C.R. 71
S.C.R. 70
S.C.R. 69
S.C.R. 68
S.C.R. 66
S.C.R. 67

Senator Brooks submitted the following report for the Committee on Health and Human Resources:

S.B. 920 (Amended)
S.B. 1292

Senator Parmer, Acting Chairman, submitted the following report for the Committee on Health and Human Resources:

S.B. 818

Senator Brooks submitted the following report for the Committee on Health and Human Resources:

C.S.S.B. 560 (Read first time)
C.S.S.B. 984 (Read first time)
C.S.S.B. 1216 (Read first time)
C.S.S.B. 813 (Read first time)
C.S.H.B. 1174 (Read first time)

Senator Traeger submitted the following report for the Committee on Intergovernmental Relations:

S.B. 1053
S.B. 1273
S.B. 1052
S.B. 1128
S.B. 1306
C.S.S.B. 839 (Read first time)
C.S.S.B. 682 (Read first time)

Senator Santiesteban submitted the following report for the Committee on Natural Resources:

S.B. 732
S.B. 1188
S.B. 1214
S.B. 734
S.B. 1325
S.B. 733
S.B. 1222
S.B. 1145 (Amended)
H.B. 1231
C.S.S.B. 1036 (Read first time)
C.S.S.B. 963 (Read first time)
C.S.S.B. 866 (Read first time)

SENATE BILLS AND RESOLUTIONS ON FIRST READING

On motion of Senator Parmer and by unanimous consent, the following bills and resolutions were introduced, read first time and referred to the Committee indicated:

S.B. 1345 by Parmer Finance

Relating to calculation of an ad valorem tax rate when an error in the preceding year caused the loss of a substantial amount of tax revenue.

S.B. 1346 by Parmer, Montford Health and Human Resources

Relating to the regulation of the care and treatment of animals in commercial kennels; providing a penalty.

S.B. 1347 by Parmer Health and Human Resources

Relating to the regulation of the care and treatment of animals in boarding or riding stables; providing a penalty.

S.C.R. 80 by Parmer Health and Human Resources

Urging the federal government to continue funding for federal/state nutrition programs.

S.C.R. 81 by Parmer Health and Human Resources

Creating the Joint Committee to Study Hunger in Texas.

HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

H.B. 103, To Committee on Health and Human Resources.

H.B. 171, To Committee on Jurisprudence.

H.B. 279, To Committee on Health and Human Resources.

H.B. 382, To Committee on State Affairs.

H.B. 559, To Committee on Jurisprudence.

H.B. 603, To Committee on Economic Development.

H.B. 637, To Committee on Jurisprudence.

H.B. 675, To Committee on State Affairs.

H.B. 729, To Committee on State Affairs.

H.B. 860, To Committee on State Affairs.

H.B. 886, To Committee on Economic Development.

H.B. 897, To Committee on Economic Development.

H.B. 1032, To Committee on Health and Human Resources.

H.B. 1064, To Committee on Natural Resources.

H.B. 1133, To Committee on Economic Development.

H.B. 1426, To Committee on Jurisprudence.

H.B. 1474, To Committee on State Affairs.

H.B. 1507, To Committee on Jurisprudence.

H.B. 1848, To Committee on Education.

H.B. 1849, To Committee on Economic Development.

H.B. 1970, To Committee on State Affairs.

H.B. 2018, To Committee on Health and Human Resources.

H.B. 2194, To Committee on State Affairs.

H.J.R. 24, To Committee on State Affairs.

H.C.R. 123, To Committee on Economic Development.

H.C.R. 72, To Committee on Administration.

H.C.R. 108, To Committee on Administration.

H.C.R. 137, To Committee on Administration.

H.C.R. 138, To Committee on Administration.

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on State Affairs, Subcommittee on Nominations:

Austin, Texas

April 20, 1983

TO THE SENATE OF THE SIXTY-EIGHTH LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

TO BE JUDGE OF THE SECOND 25th JUDICIAL DISTRICT COURT, COLORADO, GONZALES, GUADALUPE AND LAVACA COUNTIES, UNTIL THE NEXT GENERAL ELECTION AND UNTIL HIS SUCCESSOR SHALL BE ELECTED AND DULY QUALIFIED:

GUS J. STRAUSS

112 Oak Ridge Drive

Yoakum, Texas 77995

(Mr. Strauss is replacing Judge E. W. Patteson of Gonzales, Gonzales County, Texas, who resigned.)

April 21, 1983

TO BE A MEMBER OF THE TEXAS BOARD OF HUMAN RESOURCES:

For a term to expire January 20, 1987:

THOMAS M. DUNNING

5510 Nakoma

Dallas, Texas 75209

(Mr. Dunning is replacing Dr. Frederick C. Rehfeldt, of Millsap, Parker County, Texas, who resigned.)

Respectfully submitted,

/s/Mark White

Governor of Texas

SENATE BILL 228 WITH HOUSE AMENDMENT

Senator Blake called **S.B. 228** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.
Amendment No. 1 - Mankins

Substitute the following for **S.B. 228**:

A BILL TO BE ENTITLED

AN ACT

relating to the exemptions from identification requirements for state-owned vehicles.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 6701m-1, Revised Statutes, is amended to read as follows:

Art. 6701m-1. INSCRIPTION ON STATE VEHICLE. There shall be printed upon each side of every automobile, truck or other motor vehicle owned by the State of Texas the word "Texas," followed in letters of not less than two (2)

inches high by the title of the department, bureau, board, commission or official having the custody of such car, and such inscription shall be in a color sufficiently different from the body of the car so that the lettering shall be plainly legible at a distance of not less than one hundred (100) feet, and the official having control thereof shall have such wording placed thereon as prescribed herein, and whoever drives any automobile, truck or other motor vehicle belonging to the State upon the streets of any town or city or upon a highway without such inscription printed thereon shall be fined not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00). Provided, however, State-owned vehicles under control and custody of the State Board of Pharmacy, Texas Department of Mental Health and Mental Retardation, the Department of Public Safety, the Texas Department of Corrections, the [Texas] Parks and Wildlife Department, the Railroad Commission of Texas, the Texas Alcoholic Beverage Commission, the Texas Juvenile Probation Commission, Agencies and Branches of Government for whom appropriations are made under the article of the General Appropriations Act that appropriates money to the legislature, and the Texas Youth Council may be exempt from the requirements of this Act by rule and regulation of the governing bodies of these State agencies. Such rules and regulations shall specify the primary use to which vehicles exempt from the requirements of this Act are devoted, the purpose to be served by not printing on them the inscriptions required by this Act and such rules and regulations shall not be effective until filed with the Secretary of State. Whoever drives a vehicle exempted from the requirements of this Act as authorized by this provision shall not be subject to the penalties prescribed in this Act.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Blake moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 435 WITH HOUSE AMENDMENT

Senator Farabee called S.B. 435 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1 - D. Lee

Substitute the following for S.B. 435:

A BILL TO BE ENTITLED AN ACT

revising the Texas Mental Health Code; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Texas Mental Health Code is revised to read as follows:

"CHAPTER 1. GENERAL PROVISIONS

"Section 1. Short Title. This Act shall be known and may be cited as the Texas Mental Health Code.

"Section 2. Purpose. It is the purpose of this code to provide access to humane care and treatment for all persons who suffer from severe mental illness by:

"(1) facilitating treatment in an appropriate setting;

"(2) enabling them to obtain needed evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to themselves and their families;

"(3) eliminating, if so requested, the traumatic effect on the patient's mental health of public trial and criminal-like procedures;

"(4) protecting each person's right to a judicial determination of their need for involuntary treatment;

"(5) defining the criteria which must be met for the state to order care and treatment on an involuntary basis;

"(6) establishing procedures by which facts may be obtained, examinations carried out, and decisions made promptly and fairly;

"(7) safeguarding the legal rights of patients in such a manner as to advance and not impede the therapeutic and protective purposes of involuntary mental health care; and

"(8) safeguarding the rights of those who voluntarily seek in-patient care.

"Section 3. Applicability of Standard Rules of Construction and Definitions. Unless specifically supplanted by this code or unless the context otherwise requires, the provisions of Articles 10, 11, 12, 14, 22, and 23, Revised Statutes, and Chapter 359, Acts of the 50th Legislature, 1947 (Article 23a, Vernon's Texas Civil Statutes), apply to this code.

"Section 4. Definitions. As used in this code, unless the context otherwise requires:

"(1) 'Department' means the Texas Department of Mental Health and Mental Retardation.

"(2) 'Person' includes an individual, firm, partnership, joint-stock company, joint venture, association, and corporation.

"(3) 'Political subdivision' includes a county, city, town, village, or hospital district in this state but does not include the department or any other department, board, or agency of the state having statewide authority and responsibility.

"(4) 'Physician' means a person licensed to practice medicine in the State of Texas or a person employed by any agency of the United States having a license to practice medicine in any state of the United States.

"(5) 'Non-physician mental health professional' means a psychologist licensed to practice in Texas and also designated as a health-service provider, a registered nurse with a master's or doctoral degree in psychiatric nursing, or a certified social worker with a master's or doctoral degree and advanced clinical practitioner recognition.

"(6) 'Head of hospital' means the individual in charge of a hospital.

"(7) 'General hospital' means a hospital operated primarily for the diagnosis, care, and treatment of the physically ill.

"(8) 'Mental illness' means an illness, disease, or condition which either:

"(A) substantially impairs the person's thought, perception of reality, emotional process, or judgment; or

"(B) grossly impairs behavior as manifested by recent disturbed behavior.

"(9) 'Mentally ill person' means a person who is mentally ill. For purposes of this code the term 'mentally ill person' includes a person who is suffering from the mental conditions referred to in Article 1, Section 15-a, of the Constitution of the State of Texas.

"(10) 'Mental hospital' means a hospital operated for the primary purpose of providing in-patient care and treatment for the mentally ill. A hospital operated by an agency of the United States and equipped to provide in-patient care and treatment for the mentally ill shall be considered a mental hospital.

"(11) 'State mental hospital' means a mental hospital operated by the department.

"(12) 'Private mental hospital' means a mental hospital operated by any person or political subdivision.

"(13) 'Mental health facility' means an in-patient or out-patient mental health facility operated by the department, by any person or political subdivision,

or by an agency of the United States; a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon's Texas Civil Statutes), which provides mental health services; and that identifiable part of a general hospital that provides diagnosis, treatment, and care for mentally ill persons.

"(14) 'Head of a facility' means the individual in charge of a mental health facility.

"(15) 'Patient' means any person who is receiving voluntary or involuntary mental health services pursuant to this code.

"(16) 'Least restrictive appropriate setting for treatment' means that available treatment setting which provides the patient with the highest likelihood of improvement or cure and which is no more restrictive of the patient's physical or social liberties than is necessary for the most effective treatment of the patient and for adequate protection against any dangers which the patient poses to himself or others.

"(17) 'Commitment order' means a court order for involuntary in-patient treatment pursuant to this code.

"Section 5. Admission Not Affected by Certain Conditions. 'Mental illness' as used in this code does not include epilepsy, senility, alcoholism, or mental deficiency. However, no person who is mentally ill shall be barred from admission or commitment to a mental health facility because he is also suffering from epilepsy, senility, alcoholism, or mental deficiency.

"Section 6. Notice. Except as specifically provided herein, notice required by this code may be given in any manner reasonably calculated to give actual knowledge to the person to be notified.

"Section 7. Section Headings. Section headings are not a part of this code. The section headings are mere catchwords designed to give some indication of the contents of the sections to which they are attached.

"Section 8. Additional Powers of the Department. In addition to the specific authority granted by other provisions of law, the department is authorized to prescribe the form of applications, certificates, records, and reports provided for under this code and the information required to be contained therein; to require reports from the head of any mental health facility relating to the admission, examination, diagnosis, release, or discharge of any patient; to visit each facility regularly to review the commitment procedures of all new patients admitted between visits; to investigate by personal visit complaints made by any patient or by any person on behalf of a patient; and to adopt such rules and regulations not inconsistent with the provisions of this code as may be necessary for proper and efficient treatment of the mentally ill.

"Section 9. Delegation of Powers and Duties. (a) Unless otherwise expressly provided in this code, a power granted to or a duty imposed upon the department may be exercised or performed by an authorized, qualified employee, but the delegation of a duty does not relieve the department from its responsibility.

"(b) Unless otherwise expressly provided in this code, a power granted to or a duty imposed upon the head of a facility may be exercised or performed by an authorized, qualified designee, but the delegation of a duty does not relieve the head of a facility from his responsibility.

"Section 10. County Court; Probate Court; Open at all Times. The term 'county court' is used in this code to mean the 'probate court' or the court having probate jurisdiction, and the term 'county judge' means the judge of such court. The county court shall be open at all times for proceedings under this code.

"Section 11. Papers to be Filed with Clerk. All applications, petitions, certificates, and all other papers permitted or required to be filed in the county court

by this code shall be filed with the county clerk of the proper county who shall file the same and endorse on each paper the date filed and the docket number and his official signature.

"Section 12. Inspection of Records in Mentally Ill Dockets of County Clerks. Each and every statement of facts, together with each and every other writing which discloses intimate details of the personal and private life of the accused or the patient or which discloses intimate details of the personal life of any and all members of the family of the accused or the patient, in a mentally ill docket in the office of the county clerk are hereby declared to be public records of a private nature which may be used, inspected, or copied only by a written order of the county judge, a probate judge, a court of domestic relations judge, or a district judge of the county in which the docket is located, and no such order shall issue until the issuing judge has determined informally to his satisfaction that said use, inspection, or copying is justified and in the public interest.

"Section 13. County Attorney to Represent State. The county attorney or the district attorney in counties having no county attorney shall represent the state in hearings on court-ordered mental health services pursuant to this code.

"Section 14. Costs. (a) The county which entered an Order for Temporary Mental Health Services shall pay the costs of any proceedings for Court-Ordered Mental Health Services, including attorney fees and physician examination fees, compensation for language interpreters, sign interpreters, and masters appointed by the court pursuant to Section 15 of this code, and expenses of transportation to a state mental health facility or to an agency of the United States. If a patient under an Order for Temporary Mental Health Services requires extended treatment, the court which entered the temporary order shall arrange with the appropriate court of the county in which the patient is being treated for a hearing on Court-Ordered Extended Mental Health Services to be held before the date of expiration of the Order for Temporary Mental Health Services, or the county of the court which entered the original Order for Temporary Mental Health Services shall pay the expenses of transportation of the patient back to that county for such hearing.

"(b) For the amounts of these costs actually paid, the county is entitled to reimbursement by the patient or any person or estate liable for his support in a state mental health facility.

"(c) The county which accepts an Application for Court-Ordered Mental Health Services and issues an Order for Protective Custody shall pay the costs of a probable cause hearing pursuant to that order and any attendant expenses including transportation of the patient for such hearing.

"(d) Unless the patient or someone responsible for him is able to do so, the state shall pay the cost of transportation home of a discharged or furloughed patient and the return of a patient absent without authority.

"(e) Neither the county nor the state shall pay any costs for a patient committed to a private hospital.

"Section 15. Compensation for Court-Appointed Personnel. The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and masters appointed under this code. The compensation paid shall be taxed as costs in the case.

"Section 16. Return of Committed Patient to State of Residence. (a) The department may return a nonresident patient committed to a mental health facility operated by the department in this state to the proper agency of the state of his residence.

"(b) The department may permit the return of any resident of this state who is committed to a mental health facility operated by the department in another state.

"(c) The head of a mental health facility operated by the department may detain a patient returned to this state from the state of his commitment for a period

not to exceed 96 hours pending order of the court in commitment proceedings in this state.

"(d) All expenses incurred in returning committed patients to other states shall be paid by this state. The expense of returning residents of this state shall be borne by the states making the return.

"Section 17. Reciprocal Agreements. The department is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the states of their residence of patients committed to mental health facilities in this or other states.

"Section 18. Liability. All persons acting in good faith, reasonably, and without negligence in connection with examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this code shall be free from all liability, civil or criminal, by reason of such action. Provided, however, that physicians performing medical examinations and providing information to courts in any court proceeding held pursuant to the code shall be considered an officer of the court and shall not be held liable for such examination or testimony when acting without malice.

"Section 19. Penalties for Unwarranted Commitment. Any person who wilfully causes or conspires with or assists another to cause the unwarranted commitment of any individual to a mental health facility is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$5,000 or by imprisonment in the county jail not exceeding two years or by both.

"Section 20. Penalties for Violation of this Code. Any person who knowingly violates any provision of this code is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$5,000 or by imprisonment in the county jail not exceeding one year or by both.

"Section 21. Enforcement Officers. The attorney general and the district attorneys and county attorneys, within their respective jurisdictions, shall prosecute violations of this code.

"CHAPTER 2. VOLUNTARY IN-PATIENT MENTAL HEALTH SERVICES

"Section 22. Voluntary Admission. (a) The head of a facility or his authorized, qualified designee may admit to in-patient mental health services on a voluntary basis any person for whom a proper request for admission is filed, if he determines upon the basis of a preliminary examination that the person has symptoms of mental illness and will benefit from the services. Further, the head of the facility must determine that the person has been informed about the rights of voluntary patients, as provided in Section 25 of this code, and that the person, or the parent, managing conservator, or guardian, if the person is under the age of 16, as provided in Section 23 of the code, voluntarily agrees to admission.

"(b) A minor 16 years of age or older may be admitted to voluntary in-patient mental health services without the consent of the parent, managing conservator, or guardian.

"Section 23. Request for Voluntary Admission for In-Patient Care. (a) Request for Voluntary Admission of a person to a facility as a voluntary patient shall be in writing and filed with the head of the mental health facility to which admission is sought and:

"(1) shall be signed by the person, if the person is 16 years of age or older; or

"(2) shall, if the person is under the age of 16 years be signed by the parent, or by the managing conservator if one has been appointed, or by the guardian if one has been appointed; and

"(3) shall state that the person will submit himself to the custody of the in-patient mental health facility for diagnosis, observation, care, and treatment until

he is discharged or until the expiration of 96 hours after written request for his release is filed with the head of the mental health facility.

"(b) A person or agency appointed as a guardian or managing conservator, in its capacity as an employee or agent of the State of Texas or a political subdivision thereof may request voluntary admission of a minor under the age of 16 years only with that minor's consent.

"(c) If sufficient time is available prior to a person's release from voluntary in-patient mental health services, a plan for continuing care shall be developed in the same manner as provided in Section 67 of this code for involuntary patients.

"Section 24. Application for Court-Ordered Mental Health Services During Voluntary In-Patient Care. No Application for Court-Ordered Mental Health Services may be filed for the commitment of a voluntary patient unless a request for his release has been filed with the head of the facility or unless in the opinion of the head of the facility he meets the criteria for court-ordered mental health services and:

"(1) he is absent without authorization; or

"(2) he refuses or is unable to consent to appropriate and necessary psychiatric treatment.

"Section 25. Rights of Voluntary Patients Admitted for In-Patient Care. Every voluntary patient in a mental health facility has the following rights:

"(1) the right to leave the mental health facility within 96 hours, after filing with the head of the mental health facility or his designee a written request for release, signed by the patient or someone on his behalf and with his consent, unless prior to the expiration of the 96-hour period:

"(A) written withdrawal of the request for release is filed; or

"(B) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with the provisions of this code;

"(2) the right of habeas corpus, which is not affected by admission to a mental health facility as a voluntary patient;

"(3) the right to retain civil rights and legal capacity, which are not affected by admission to a mental health facility as a voluntary patient;

"(4) the right to periodic review of his need for continued in-patient treatment;

"(5) the right not to have an application for court-ordered mental health services filed while he is a voluntary patient unless in the opinion of the head of the facility he meets the criteria for court-ordered services and he is either absent without authorization or he refuses or is unable to consent to appropriate and necessary psychiatric treatment;

"(6) the rights of patients set forth in Sections 80 and 81 of this code; and

"(7) the right, within 24 hours of admission, to be informed verbally and in writing, in the person's primary language, in simple, nontechnical terms, of these above-listed rights. The same explanation shall be given to the parent, guardian, or managing conservator of a minor.

"CHAPTER 3. INVOLUNTARY MENTAL HEALTH SERVICES

"Subchapter A. Emergency Detention

"Section 26. Apprehension by Peace Officer without Warrant. (a) Any peace officer, who has reason to believe and does believe upon the representation of a credible person, or upon the basis of the conduct of a person, or the circumstances under which the person is found, that the person is mentally ill and because of such mental illness represents a substantial risk of serious harm to himself or others unless immediately restrained, and who believes there is not sufficient time to obtain a warrant, may, without first obtaining a warrant, take such person into custody and immediately transport the person to the nearest

appropriate in-patient mental health facility or other suitable detention facility and shall immediately file application with the facility for the person's detention. In no case shall a jail or similar detention facility be deemed suitable except in an extreme emergency. Persons detained in a jail or other nonmedical facility shall be kept separate from those persons charged with or convicted of a crime.

"(b) Such application shall contain the following information:

"(1) that the officer has reason to believe and does believe that the person evidences mental illness;

"(2) that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

"(3) that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

"(4) that the officer's beliefs are based on specific recent behavior, overt acts, attempts, or threats, observed by or reliably reported to the officer, which behavior, acts, attempts, or threats shall be described in specific detail; and

"(5) the names and relationship to the person, if any, of persons reporting or observing such recent behavior, acts, attempts, or threats.

"(c) Upon presentation of the application, the facility shall temporarily accept the person for the purpose of conducting a preliminary examination by a physician. The preliminary examination shall be conducted as soon as possible within 24 hours of the time of apprehension. Upon completion of the preliminary examination, the person shall be released unless the examining physician provides the written statement required in Section 27 of this code.

"(d) The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

"(e) If the person is not admitted after the preliminary examination, arrangements shall be made for the immediate return of the person to the location of his apprehension or to his place of residence in the state or other suitable place, unless the person is arrested or objects to the return. The cost of his return shall be paid by the county in which the person was apprehended.

"(f) Such persons so apprehended may be detained in custody for a period which shall not exceed 24 hours from the time the person is presented to the facility, unless a written order for further detention is obtained; provided, however, that should the person be taken into custody after 12 noon on Friday or on a Saturday or Sunday or a legal holiday, then the 24-hour period allowed for obtaining the order permitting further detention shall begin at 9 a.m. on the first succeeding business day.

"Section 27. Emergency Admission and Detention. (a) No person shall be admitted to any facility for emergency detention unless such admission is supported by a written statement of an examining physician acceptable to the facility that after a preliminary examination it is his opinion that:

"(1) the person is mentally ill, the nature of which disorder shall be described;

"(2) the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

"(3) the described risk of harm is imminent unless the person is immediately restrained; and

"(4) emergency detention is the least restrictive means by which necessary restraint may be effected.

"(b) The statement shall contain specific detailed information on which the physician's opinion stated in Subdivisions (1), (2), (3), and (4) of Subsection (a) of this section are based.

"Section 28. Magistrate's Order for Emergency Apprehension and Detention. (a) Any adult person may execute an application for emergency detention of another. The application shall be in writing and shall state:

"(1) that the applicant has reason to believe and does believe that the person evidences mental illness;

"(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

"(3) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

"(4) that the applicant's beliefs are based on specific recent behavior, overt acts, attempts, or threats, which behavior, acts, attempts, or threats shall be described in specific detail; and

"(5) the relationship, if any, of the applicant to the person sought to be detained.

"(b) The application may be accompanied by any relevant information.

"(c) The application shall be presented personally to any magistrate, who shall examine it and may interview the applicant.

"(d) The magistrate shall deny the application unless he finds there is reasonable cause to believe:

"(1) that the person evidences mental illness;

"(2) that the person evidences a substantial risk of serious harm to himself or others;

"(3) that the risk of harm is imminent unless the person is immediately restrained; and

"(4) that necessary restraint cannot be accomplished without emergency detention.

"(e) If the magistrate finds that the person meets all four criteria for emergency detention in Subsection (a) of Section 27 of this code, he shall issue a warrant for the immediate apprehension and transportation of the person to the nearest appropriate in-patient mental health facility for a preliminary examination in accordance with the provisions of Subsection (c) of Section 26 of this code. For purposes of this section, the warrant shall serve as the application required in Subsection (b) of Section 26 of this code. Copies of the application for warrant and the warrant itself shall be immediately transmitted to the facility.

"(f) Upon completion of the preliminary examination, the person shall be released unless the examining physician provides the written statement required in Section 27 of this code. A person not admitted following the preliminary examination shall be entitled to reasonably prompt return to the location of his apprehension or his place of residence in the state or other suitable place, unless the person is arrested or objects to the return. The cost of his return shall be paid by the county in which the person was apprehended.

"(g) Such persons so apprehended may be detained in custody for a period which shall not exceed 24 hours from the time the person is presented to the facility, unless a written order for further detention is obtained; provided, however, that should the person be taken into custody after 12 noon on Friday or on a Saturday or Sunday or a legal holiday, then the 24-hour period allowed for obtaining an order permitting further detention shall begin at 9 a.m. on the first succeeding business day.

"Section 29. Release from Emergency Detention. If during the emergency detention period it is determined by the head of the facility that the conditions set out in Subdivisions (1), (2), (3), or (4) of Subsection (a) of Section 27 of this code no longer apply, the person shall be released. Arrangements shall be made for his return to the location of his apprehension or his place of residence in the state or

other suitable place, unless the person is arrested or objects to the return. The cost of his return shall be paid by the county in which the person was apprehended.

"Section 30. Rights of Persons Apprehended for Emergency Detention. (a) Each person apprehended or detained under this subchapter of the code shall have the following rights:

"(1) the right to be advised of the location of detention, the reasons for his detention, and the fact that his detention could result in a longer period of involuntary commitment;

"(2) the right to contact an attorney of his own choosing with a reasonable opportunity to contact that attorney;

"(3) the right to be transported back to the location of apprehension or to his place of residence in the state or other suitable place if not admitted for emergency detention, unless he is arrested or objects to the return;

"(4) the right to be released if the head of the facility determines that the four criteria for emergency detention set out in Subsection (a) of Section 27 of this code no longer apply; and

"(5) the right to be advised that communications to a mental health professional may be used in proceedings for further detention.

"(b) Each person apprehended or detained under this code shall be advised within 24 hours of admission, orally and in writing, in simple, nontechnical language of the rights provided in this section.

**"Subchapter B. Prerequisites to Court-Ordered
Mental Health Services**

"Section 31. Court-Ordered Mental Health Services. (a) Pursuant to the provisions of this code and upon a proper application, a judge may enter an Order for Temporary Mental Health Services or an Order for Extended Mental Health Services.

"(b) An Order for Temporary Mental Health Services authorizes treatment for a period of time not to exceed 90 days, but the order may not specify any shorter period of time. The Order for Temporary Mental Health Services may be entered only upon compliance with the provisions of Section 50 of this code.

"(c) An Order for Extended Mental Health Services authorizes treatment for a period of time not to exceed 12 months and may be entered only if the person has, for at least 60 consecutive days within the immediately preceding 12 months received mental health services under a court order pursuant to this code or pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended. The Order for Extended Mental Health Services may be entered only upon compliance with the provisions of Section 51 of this code.

"Section 32. Application for Court-Ordered Mental Health Services. (a) A sworn Application for Court-Ordered Mental Health Services may be filed by any adult person, or the county or district attorney, with the county clerk in the county in which the person resides or in which the person is found or in which the person is receiving mental health services by court order. However, upon request of the person or his attorney, the court may in its discretion for good cause shown transfer the application to the county of the person's residence, if not initially filed there.

"(b) The application shall state whether Court-Ordered Temporary Mental Health Services or Court-Ordered Extended Mental Health Services are being sought.

"(c) The application shall be in writing and shall state the following upon information and belief of the applicant:

"(1) the name and address of the proposed patient, including the county of his residence in this state;

"(2) that the person is mentally ill and meets the criteria in either Section 50 or 51 of this code for court-ordered mental health services; and

"(3) that the person is not charged with a criminal offense.

"(d) If the application is for Court-Ordered Extended Mental Health Services, the application shall further state that the person has, for at least 60 consecutive days, within the immediately preceding 12 months, received mental health services under a court order pursuant to this code or pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended.

"(e) An order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on court-ordered commitment pursuant to Section 7, Article 46.02, Code of Criminal Procedure, 1965, as amended, shall state that all such charges have been dismissed, and the order shall serve as the Application for Court-Ordered Mental Health Services under the terms of this section.

"(f) The application shall be styled using the person's initials and not his full name.

"Section 33. Certificate of Medical Examination for Mental Illness. (a) A sworn Certificate of Medical Examination for Mental Illness shall be dated and signed by the examining physician and shall state:

"(1) the name and address of the examining physician;

"(2) the name and address of the person examined;

"(3) the date and place of the examination;

"(4) a brief diagnosis of the physical and mental condition of the person examined;

"(5) the period of time, if any, that the person examined has been under the care of the examining physician;

"(6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and

"(7) the opinion of the examining physician and the detailed basis for that opinion that:

"(A) the person examined is mentally ill; and

"(B) as a result of that illness the person:

"(i) is likely to cause serious harm to himself;

"(ii) is likely to cause serious harm to others; or

"(iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed decision as to whether or not to submit to treatment.

"(b) If the certificate is to be offered in support of an Application for Court-Ordered Extended Mental Health Services, the certificate shall include in addition to the requirements of Subsection (a) of this section the opinion of the examining physician and the detailed basis for that opinion that the condition of the person is expected to continue for more than 90 days.

"(c) If the certificate is to be offered in support of a Motion for an Order of Protective Custody, the certificate shall include in addition to the requirements of Subsection (a) of this section the opinion of the examining physician and the detailed basis for that opinion that the person presents a substantial risk of serious harm to himself or others if not immediately restrained.

"Section 34. Recommendation for Treatment. (a) The Commissioner of Mental Health and Mental Retardation shall designate a facility or provider in the county in which an Application for Court-Ordered Mental Health Services is filed to file with the court a recommendation for the most appropriate treatment alternative for the proposed patient. The commissioner may designate a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), or any other appropriate facility or provider in the county to make the recommendation.

“(b) The court shall direct the designated facility or provider to file its recommendation with the court before the date set for the hearing.

“(c) Except in an emergency as determined by the court, a hearing on an application may not be held before the recommendation required by this section is filed.

“(d) This section does not relieve a county of any of its responsibilities under other provisions of this code for the diagnosis, care, or treatment of the mentally ill.

“(e) The extent to which a designated facility must comply with the provisions of this section shall be based on the commissioner’s determination that the facility has sufficient resources to perform the necessary services.

“(f) This section does not apply to a person for whom treatment in a private mental health facility is proposed.

“Subchapter C. Prehearing Liberty or Protective Custody

“Section 35. Liberty Pending Hearing. Pending the hearing on an Application for Court-Ordered Mental Health Services, the person shall remain at liberty, unless he is legally detained under an appropriate provision of this code.

“Section 36. Protective Custody. (a) A Motion for an Order of Protective Custody may be filed only in the court in which an Application for Court-Ordered Mental Health Services is pending. The motion may be filed by the county or district attorney or on the court’s own motion. The motion shall state that the judge or the county or district attorney has reason to believe and does believe upon the representations of a credible person, or upon the basis of the conduct of the person, or the circumstances under which the person is found that the person meets the criteria set forth in Subsection (b) of this section. The motion shall be accompanied by a Certificate of Medical Examination for Mental Illness by a physician who has examined the person within five days of the filing of the motion.

“(b) The judge may issue an Order of Protective Custody if the judge determines:

“(1) that a physician has stated his opinion and the detailed basis for his opinion that the person is mentally ill; and

“(2) the person presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing.

“This determination may be made on the basis of the application and the certificate. If the judge concludes that a fair determination of the matter cannot be made on this information, the judge may take further evidence. If the determination is made on the basis of the application and the certificate, the judge must determine that the conclusions of the applicant and the certifying physician are adequately supported by the information presented.

“(c) The Order of Protective Custody shall direct a peace officer or other designated person to take the person into protective custody and immediately transport him to a designated in-patient mental health facility or other suitable place and detain him pending a probable cause hearing. The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

“Section 37. Appointment of Attorney; Notice of Probable Cause Hearing. (a) When an Order for Protective Custody is signed, the presiding judge shall simultaneously appoint an attorney, if there is no attorney representing the proposed patient.

“(b) The proposed patient and his attorney shall be served within a reasonable period of time prior to the time of the probable cause hearing with written notice

that the patient has been placed under an order of protective custody, the reasons why such order was issued, and the time and place of a hearing to establish probable cause to believe that the patient is mentally ill and presents a substantial risk of serious harm to himself or others such that he cannot be at liberty pending the hearing on court-ordered mental health services. Such notice shall be provided by the court ordering protective custody.

"Section 38. Probable Cause Hearing on Protective Custody. (a) A probable cause hearing shall be held within 72 hours of the time detention begins pursuant to the order for protective custody; provided, however, that if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the probable cause hearing shall be held on the first succeeding business day. The hearing shall be before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. The master shall receive reasonable compensation. At the hearing, the patient and his attorney shall have an opportunity to appear and present evidence to challenge the allegation that the patient presents a substantial risk of serious harm to himself or others. The magistrate or master may consider evidence including letters, affidavits, and other material that may not be admissible or sufficient in a subsequent commitment hearing. The state may prove its case on the physician's certificate filed in support of the initial detention.

"(b) If after the hearing the magistrate or master determines that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others, he shall order the patient's release. Arrangements shall be made for the return of the patient to the location of his apprehension or to his place of residence within the state or some other suitable place. If after the hearing the magistrate or master determines that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others such that he cannot be at liberty pending the commitment hearing, the patient's detention in protective custody shall continue subject to the provisions of Section 39 of this code. If the protective custody is to continue, the magistrate or master shall arrange for the patient to be returned to the mental health facility or other suitable place along with copies of the certificate, affidavits, and other material submitted as evidence and a Notification of Probable Cause Hearing which shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the ____ day of _____, 19____, the undersigned hearing officer heard evidence concerning the need for protective custody of _____

(proposed patient)

The proposed patient _____ was
(name of proposed patient)

given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

_____ and his attorney
(proposed patient)

_____ have been given written notice that
(attorney)

_____ was placed under an order of
(proposed patient)

protective custody and the reasons for such order on

(date of notice)

I have examined the certificate of medical examination for
mental illness and _____

(other evidence considered)

Based upon this evidence, I find that there is probable cause to
believe that _____ presents a substantial
(proposed patient)

risk of serious harm to himself (yes ___ or no ___) or others
(yes ___ or no ___) such that (s)he cannot be at liberty
pending final hearing because _____

(reasons for finding; type of risk found)

A copy of the Notification of Probable Cause Hearing and the supporting evidence shall also be filed with the county court which entered the original Order of Protective Custody.

“Section 39. Detention in Protective Custody; Release From Custody. (a) The head of a facility in which a person is detained pursuant to an Order for Protective Custody or his designee shall detain the person pending an Order for Court-Ordered Mental Health Services issued pursuant to Section 50 or 51 of this code, except as provided in this section.

“(b) The person detained in protective custody shall be detained in an appropriate in-patient mental health facility or other facility deemed suitable by the county health officer. No person may be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime except because of and during an extreme emergency and in no case for a period of more than 72 hours; provided, however, that if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the person may be detained in such a facility until the first succeeding business day. Persons detained in a nonmedical facility shall be kept separate from those persons charged with or convicted of a crime.

“(c) If the person is detained during an emergency in a nonmedical facility, the county health officer shall see that proper care and medical attention are made available to the person held in protective custody.

“(d) If the head of the facility in which the person is detained does not receive notice that a probable cause hearing has been held within 72 hours of the time detention begins pursuant to the order of protective custody, excepting weekends and holidays, authorizing the protective custody to continue, the head of the facility shall immediately release the patient from custody. Patients for whom probable cause has been established to justify continued protective custody following the probable cause hearing and pending a hearing on Court-Ordered Mental Health Services shall be discharged by the head of the facility in which he has been detained if:

“(1) a final Order for Court-Ordered Mental Health Services has not been entered by the court before the expiration of 14 days or before the expiration of 21 days if an order of continuance has been granted pursuant to Section 42 or Subsection (d) of Section 49 of this code; or

“(2) the head of the facility or his designee determines that such patient no longer meets the criteria for protective custody as specified in Section 36 of this code.

“Subchapter D. Proceedings for Court-Ordered Mental Health Services

“Section 40. Court in Which Proceedings to be Held. A proceeding pursuant to this subchapter shall be held in the statutory court of the county

exercising the jurisdiction of a probate court in mental illness matters. If there is no such court in a county, the proceedings shall be heard in the county court.

"Section 41. Transfer of Proceeding from County Court. Where a proceeding is to be held in the county court under Section 40 of this code and the county judge of that court is not a licensed attorney, the person or his attorney may request that such proceeding be transferred to a court with a judge that is an attorney licensed to practice law in this state. The proceeding shall then be transferred by the county judge to such court and be heard as if originally filed in such court.

"Section 42. Setting on Application for Court-Ordered Mental Health Services. When an Application for Court-Ordered Mental Health Services is filed, the judge shall set a date for a hearing to be held within 14 days of the filing of the application. If the proposed patient or his attorney objects, the hearing shall not be held within the first three days following the filing of the application. Upon good cause shown or upon agreement of the parties, the court may grant a single continuance of the hearing for a period not to exceed seven days.

"Section 43. Notice. (a) Immediately after the judge sets the date for the hearing, the person shall be personally served with a copy of the application and written notice of the time and place of hearing thereon. A copy of the application and notice shall be sent by certified mail to the parent if the person is a minor or to the duly appointed guardian if the person is the subject of a guardianship or to the managing conservator if one has been appointed.

"(b) Within a reasonable time before the hearing on the application the county or district attorney shall provide the person's attorney with a statement including the following information, provided that the person's attorney has been unable to obtain such information and has requested such information from the county or district attorney prior to 48 hours before the time set for the hearing:

"(1) the provisions of this code which will be relied upon at the hearing to establish that the person requires temporary or extended mental health services;

"(2) the names, addresses, and telephone numbers of the witnesses who may testify at the hearing;

"(3) a brief description of the reasons why court-ordered temporary or extended mental health services are required; and

"(4) a list of any acts of the person which the applicant will attempt to prove at the hearing.

"(c) At the hearing, the judge may in his discretion admit evidence and testimony relating to matters not disclosed under the provisions of Subsection (b) of this section, upon a determination that such admission would not deprive the person of a fair opportunity to contest such evidence or testimony.

"Section 44. Appointment of Attorney. (a) Within 24 hours after the filing of an Application for Court-Ordered Mental Health Services, the judge shall appoint an attorney to represent the person if he does not already have an attorney representing him.

"(b) At the time of appointment of an attorney, the judge shall also appoint a language interpreter or a sign interpreter if the person is hearing impaired as required to ensure effective communication with the attorney in the person's primary language.

"(c) The person's attorney shall be furnished with all records and papers in said cause and shall have access to all hospital and doctors' records in said cause.

"Section 45. Duties of Attorney. An attorney representing a person who is the subject of proceedings for court-ordered mental health services under this code shall fulfill at least the following duties:

"(a) The attorney shall, within a reasonable time prior to the hearing, interview the person. The attorney shall thoroughly discuss with the person the law and facts of the case, the person's options, and the grounds upon which

court-ordered mental health services are being sought. He shall, if court-appointed, further explain to the person that the person may obtain his own counsel at his own expense, rather than accept representation by court-appointed counsel. The attorney may advise the person concerning the wisdom of agreeing to or resisting efforts to provide mental health services. Whether or not to resist such efforts, however, is a decision to be made by the person. If the person expresses a desire to avoid court-ordered mental health services, the attorney has the duty to use all reasonable efforts within the bounds of law to advocate the person's right to avoid court-ordered mental health services, without regard to the attorney's personal view.

"(b) After interviewing the person, if the attorney wishes to withdraw from the case, he shall file a motion with the court. Such a motion shall be acted upon as soon as possible. In no event may the attorney withdraw from the case unless authorized to do so by court order.

"(c) Prior to the hearing, the attorney shall:

"(1) review the application, the certificates of medical examination for mental illness, and relevant medical records of the person;

"(2) interview supporting witnesses and other witnesses who will testify at the hearing; and

"(3) explore the possibility of alternatives to court-ordered in-patient mental health services.

"(d) The attorney shall discuss with the person the procedures for appeal, release, and discharge if the court orders participation in mental health services and other rights the person may have during the period of the court's order.

"(e) The attorney shall maintain responsibility for the person's legal representation until the application is dismissed, appeal from an order directing treatment is taken, the time for giving notice of appeal has expired by operation of law, or another attorney assumes responsibility for the matter, whichever is later.

"Section 46. Examination Required; Appointment of Examiners; Dismissal of Application. (a) Before a hearing may be held on an Application for Court-Ordered Mental Health Services, there must be filed with the court Certificates of Medical Examination for Mental Illness by two physicians, at least one of whom shall be a psychiatrist if one is available in the county, who have each examined the person within the preceding 30 days.

"(b) If the certificates are not filed with the application, the judge shall appoint the necessary physicians, at least one of whom shall be a psychiatrist if one is available in the county, to examine the person and file certificates with the court. The judge may order the proposed patient to submit to the examination and may issue a warrant under which a peace officer may take the person into custody for the purpose of the examinations.

"(c) Unless at the time set for hearing on the application there are on file with the court two Certificates of Medical Examination for Mental Illness based on examinations conducted within the preceding 30 days, the judge shall dismiss the application and order the immediate release of the person if he is not at liberty.

"Section 47. Medical or Psychiatric Testimony. (a) At the hearing on an Application for Court-Ordered Temporary Mental Health Services, the person and his attorney may waive in writing the right to cross-examine witnesses. If such a waiver is made and filed with the court, the court may admit into evidence the Certificates of Medical Examination for Mental Illness and make its findings on the basis of the certificates. If so admitted, the certificates shall constitute competent medical or psychiatric testimony and the court may make its findings on the basis of these certificates.

"(b) At a hearing on an Application for Court-Ordered Extended Mental Health Services, the court may not make its findings solely on the basis of the certificates of mental illness. The court shall proceed to hear testimony. No order

for extended mental health services shall be entered unless appropriate findings are made and supported by testimony taken at the hearing. The testimony shall include competent medical or psychiatric testimony.

"(c) Nothing in this section shall preclude the court from considering the testimony of a nonphysician mental health professional, as defined in Section 4 of this code in addition to medical or psychiatric testimony.

"Section 48. Hearing on Court-Ordered Mental Health Services. (a) The judge may hold the hearing on an Application for Court-Ordered Mental Health Services at any suitable place within the county. The hearing should be held in a physical setting not likely to have a harmful effect on the person. Upon demand of the person or his attorney, the hearing shall be held in the courthouse of the county.

"(b) The person shall have the right to be present, but his presence may be waived by the person or his attorney.

"(c) The hearing shall be public unless the person or his attorney requests that the hearing be closed and the court determines there is good cause for closing the hearing.

"(d) The Rules of Evidence applicable in civil litigation shall govern the proceedings except where inconsistent with this code.

"(e) The hearing shall be on the record, and the state's burden of proof shall be to prove each element of the applicable criteria by clear and convincing evidence.

"Section 49. Hearing Before Jury. (a) The hearing for Court-Ordered Temporary Mental Health Services shall be before the court unless a trial by jury is requested by the person or his attorney. The hearing for Court-Ordered Extended Mental Health Services shall be before a jury unless a jury trial has been waived pursuant to Subsection (c) of this section. In no case shall a jury fee be required.

"(b) In a hearing before a jury, the jury shall determine whether or not the person is mentally ill and meets the criteria for court-ordered mental health services but shall make no finding about the type of services to be provided.

"(c) Waiver of trial by jury shall be in writing under oath and shall be signed and sworn to by the proposed patient and by his attorney. A waiver of this right shall be filed at least 48 hours prior to the scheduled time of the hearing.

"(d) Upon good cause shown, the court may permit a waiver of jury trial properly made and filed to be withdrawn. If a waiver is withdrawn within 48 hours of the scheduled time of the hearing, the court may order a continuance for a reasonable period, not to exceed 72 hours, in order to permit a hearing before a jury. If the person is detained pending the hearing under an Order of Protective Custody, that order may be extended to authorize detention for an additional period not to exceed the period of a continuance granted pursuant to this section.

"Section 50. Order Upon Hearing on Application for Temporary Mental Health Services. (a) If upon the hearing on an Application for Court-Ordered Temporary Mental Health Services the judge or jury fails to find, on the basis of clear and convincing evidence, that the person is mentally ill and meets the criteria for court-ordered mental health services, the court shall enter its order denying the application and shall order the immediate release of the person if he is not at liberty.

"(b) Upon the hearing, the judge or the jury, if one has been requested, shall determine that the person requires court-ordered mental health services only if it finds, on the basis of clear and convincing evidence, that:

"(1) the person is mentally ill; and

"(2) as a result of that mental illness the person:

"(i) is likely to cause serious harm to himself; or

"(ii) is likely to cause serious harm to others; or

"(iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed decision as to whether or not to submit to treatment.

“(c) The clear and convincing evidence must include expert testimony and, unless waived, evidence of either a recent overt act or a continuing pattern of behavior in either case tending to confirm the likelihood of serious harm to the person or others or the person’s distress and deterioration of ability to function.

“(d) If upon the hearing the jury or judge determines that the person is mentally ill and meets the criteria for court-ordered mental health services, the judge shall then dismiss the jury, if any. The judge may hear additional evidence regarding alternative settings for care and shall enter an order providing for one of the following:

“(1) The judge may enter an order committing the person to a mental health facility for in-patient care.

“(2) The judge may enter an order requiring the person to participate in mental health services other than in-patient care, including but not limited to programs of community mental health and mental retardation centers and services provided by a private psychiatrist or psychologist.

“(e) In determining the setting for care, the judge shall consider the recommendation for the most appropriate treatment alternative filed pursuant to Section 34 of this code. Mental health services shall be ordered in the least restrictive appropriate setting available.

“(f) An order entered pursuant to this section shall specify a period not to exceed 90 days but shall not specify any shorter period of time.

“Section 51. Order Upon Hearing on Application for Extended Mental Health Services. (a) If upon the hearing on an Application for Court-Ordered Extended Mental Health Services the judge or jury fails to find, on the basis of clear and convincing evidence, that the person is mentally ill and meets the criteria for court-ordered mental health services, the court shall enter its order denying the application and shall order the immediate release of the person if he is not at liberty.

“(b) Upon the hearing, the jury or the judge, if jury trial has been waived, shall determine that the person requires court-ordered mental health services only if it finds, on the basis of clear and convincing evidence, that:

“(1) the person is mentally ill; and

“(2) as a result of that mental illness the person:

“(i) is likely to cause serious harm to himself; or

“(ii) is likely to cause serious harm to others; or

“(iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed choice as to whether or not to submit to treatment; and,

“(3) the condition of the person is expected to continue for more than 90 days; and,

“(4) the person has either:

“(i) received in-patient mental health services under court order pursuant to this code for at least 60 consecutive days within the 12 months immediately preceding the hearing; or

“(ii) received in-patient mental health services under court order pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended, for at least 60 consecutive days within the 12 months immediately preceding the hearing.

“(c) The clear and convincing evidence must include expert testimony and evidence of either a recent overt act or a continuing pattern of behavior in either case tending to confirm the likelihood of serious harm to the person or others or the person’s distress and deterioration of ability to function.

“(d) If upon the hearing the judge or jury determines that the person is mentally ill and meets the criteria for court-ordered mental health services for an

extended period, the judge shall then dismiss the jury, if any. The judge may hear additional evidence regarding alternative settings for care and shall enter an order providing for one of the following:

"(1) The judge may enter an order committing the person to a mental health facility for in-patient care.

"(2) The judge may enter an order requiring the person to participate in mental health services other than in-patient care, including but not limited to programs of community mental health and mental retardation centers and services provided by a private psychiatrist or psychologist.

"(e) In determining the setting for care, the judge shall consider the recommendation for the most appropriate treatment alternative filed pursuant to Section 34 of this code. Mental health services shall be ordered in the least restrictive appropriate setting available.

"(f) An order entered pursuant to this section shall specify a period not to exceed 12 months but shall not specify any shorter period of time.

"Section 52. Court-Ordered Out-Patient Mental Health Services and Individual Responsible. (a) An order directing that a person participate in out-patient mental health services shall identify an individual to be responsible for those services. This individual shall be the head of a mental health facility or an individual involved in providing the services in which the patient is to participate under the order. No individual shall be designated as responsible for the services ordered for a particular person without the individual's consent unless that individual is the head of a facility operated by the department or is the head of a community mental health and mental retardation center established pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon's Texas Civil Statutes), which provides mental health services.

"(b) An individual responsible for court-ordered out-patient services shall submit to the court within two weeks of the entering of an order a general program of treatment to be incorporated in the court's order.

"(c) If the person ordered to participate in out-patient mental health services fails to comply with the terms of the court's order, the individual responsible shall inform the court of such failure to comply. The individual responsible shall also inform the court of any substantial changes in the general program of treatment which may occur prior to the expiration of the order.

"(d) An order requiring a person to participate in mental health services at a community mental health and mental retardation center shall specify a center serving a region in which the court is located.

"(e) The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

"Section 53. Modification of Order for Out-Patient Mental Health Services. (a) On its own motion or at the request of the individual responsible or any other interested individual, the court which entered an order directing a person to participate in out-patient mental health services may set a hearing to determine whether the order should be modified. This section shall only apply to changes in the general program of treatment which are substantial deviations in the original program incorporated in the court's order.

"(b) If a hearing is scheduled to determine whether such an order should be modified, the court shall appoint an attorney to represent the person. The person shall be given notice concerning matters to be considered at the hearing that complies with the requirements set out in Section 43 of this code for notice preceding a hearing on an application for court-ordered mental health services.

“(c) If a hearing on modification is set, the court may order protective custody pending the hearing provided the requirements of Subchapter C of this code are met.

“(d) A hearing on a request for modification of an order for out-patient mental health services shall be before the court without a jury. The person shall be represented by an attorney and receive proper notice, and the hearing shall be held pursuant to the requirements of Section 48 of this code.

“(e) At the hearing, the court may modify the order if it determines either that:

“(1) the person has not complied with the court’s order; or

“(2) the person’s condition has so deteriorated that out-patient mental health services are no longer appropriate.

“(f) If the findings required by Subsection (e) of this section are made, the court may:

“(1) decline to modify the order and direct that the person continue to participate in out-patient mental health services pursuant to the terms of the order; or

“(2) if a revised general program of treatment has been submitted to and accepted by the court, modify the order so as to incorporate that revised treatment program and to provide for continued out-patient mental health services pursuant to the modified order; or

“(3) modify the order to provide for the commitment of the person to a facility for in-patient care.

“(g) In no case may the modified order extend beyond the time period of the original order.

“Section 54. Modification of Order for In-Patient Mental Health Services. (a) At the request of the head of the facility to which a person has been committed for in-patient mental health services, the court which entered the order may consider whether the order should be modified to provide for out-patient care. The request shall explain in detail why modification of the order is being requested and shall be accompanied by a Certificate of Medical Examination for Mental Illness by a physician based upon an examination conducted within the seven days immediately preceding the request.

“(b) The person shall be given notice of a request for modification of the order made pursuant to this section. If the person or any other interested individual demands a hearing on the request, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the person at the hearing. Such hearing shall be before the court without a jury. The person shall be represented by an attorney and receive proper notice, and the hearing shall be held pursuant to the requirements of Section 48 of this code.

“(c) If no hearing is demanded, the court may consider and make its decision on the basis of the request and the supporting certificate.

“(d) If the court determines that the order should be modified, it shall identify an individual responsible for the out-patient services pursuant to Section 52 of this code. The individual responsible shall submit to the court within two weeks of the entering of the modified order a general program of treatment to be incorporated in that order.

“(e) In no case may the modified order extend beyond the term of the original order.

“Section 55. Renewal of Order for Extended Mental Health Services. (a) The court may renew and modify an original order for extended mental health services or an order pursuant to this section.

“(b) An Application for Renewal of an Order for Extended Mental Health Services may be filed by any adult person, or the county or district attorney, as

appropriate. An application shall be accompanied by two Certificates of Medical Examination for Mental Illness based on examinations conducted within 30 days of the date of the application. The application shall explain in detail why renewal of the order is being requested. If the application requests renewal of an order committing the person to extended in-patient mental health services, it shall further explain in detail why a less restrictive setting is not appropriate.

"(c) When an application is filed, the court shall appoint an attorney to represent the person.

"(d) The person, his attorney, any other individual, or the court on its own motion may request a hearing on the application. If such a hearing is requested, the application shall be treated as an original Application for Court-Ordered Extended Mental Health Services.

"(e) If no hearing is requested on the application, the court may admit the Certificates of Medical Examination for Mental Illness into evidence and enter an order based on the certificates and the detailed request for renewal. In such cases, the certificates shall constitute competent medical or psychiatric testimony.

"(f) Before entering an Order Renewing an Order for Extended Mental Health Services, the court shall make the findings required by Section 51 of this code for an original Order for Court-Ordered Extended Mental Health Services. This shall be done whether or not a hearing is held.

"(g) If the required findings are made, the court may enter an Order Renewing an Order for Court-Ordered Extended Mental Health Services for a period not to exceed 12 months.

"(h) If the preceding order provided for extended in-patient mental health services, the court, after renewing the order, may modify the order to provide for out-patient mental health services pursuant to the requirements of Section 52 of this code.

"Section 56. Rehearing; Reexamination and Hearing. (a) For good cause shown, the court may set aside any order requiring court-ordered mental health services and grant a motion for rehearing. The court may, pending any rehearing, stay the court-ordered mental health services and release the proposed patient from custody if the court is satisfied that the proposed patient does not meet the criteria for protective custody pursuant to Section 36 of this code. The judge may require an appearance bond in an amount to be determined by the court.

"(b) Any patient who is receiving court-ordered extended mental health services or any interested person on his behalf and with his consent may file a request in the court in the county in which the patient is receiving those services for reexamination and hearing to determine whether the patient continues to meet the criteria for such court-ordered services. Upon the filing of a Request for Reexamination and Hearing, the court may upon good cause shown require a reexamination of the patient and schedule a hearing pursuant to the following procedures:

"(1) Upon the filing of a Request for Reexamination and Hearing, the judge may upon good cause shown notify the head of the facility providing mental health services to the patient.

"(2) Upon receipt of notice, the head of the facility shall cause the patient to be examined. If he or his qualified authorized designee determines that the patient no longer meets the criteria for court-ordered extended mental health services, the head of the facility or his designee shall immediately discharge the patient. If the head of the facility or his designee determines that the patient continues to meet the criteria for court-ordered extended mental health services, he shall file a Certificate of Medical Examination for Mental Illness with the court within 10 days after the filing of the Request for Reexamination and Hearing.

"(3) At the expiration of the 10-day period, if a certificate has been filed stating that the patient continues to meet the criteria for court-ordered extended

mental health services or if no certificate has been filed and the patient has not been discharged, the judge may set a time and place for a hearing on the request. At the time the hearing is set, the judge shall also appoint an attorney to represent the patient, if he is not already represented by counsel, and give notice thereof to the patient and his attorney and to the head of the facility providing court-ordered mental health services. The judge shall appoint a physician, who must be a psychiatrist if one is available in the county and who is not on the staff of the mental health facility providing court-ordered services to the patient, to examine the patient and file a Certificate of Medical Examination for Mental Illness with the court. The court shall enter the necessary orders to ensure that the patient may, if he desires, be examined by a physician of his own choosing at his own expense.

“(4) The hearing shall be before the court without a jury. Such hearing shall comply with the requirements applicable to a hearing on an application for court-ordered mental health services.

“(5) If at the hearing the court finds by clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services, as specified in Section 51 of this code, the court shall dismiss the request; otherwise, he shall order the head of the facility to discharge the patient.

“(6) When a Request for Reexamination and Hearing is filed before the expiration of six months after an Order for Extended Mental Health Services or before the expiration of six months after the filing of a similar request, the judge is not required to order such reexamination or hearing.

“Section 57. Appeal. (a) All appeals from orders requiring court-ordered mental health services, including renewals or modifications of such orders, shall be filed in the court of appeals for the county in which the order was entered.

“(b) Notice of appeal shall be filed within 10 days from the date any such order is signed.

“(c) When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

“(d) Pending the appeal, the trial judge in whose court the cause is pending may stay the order and release the person from custody if the judge is satisfied that the person does not meet the criteria for protective custody pursuant to Section 36 of this code. The judge may require an appearance bond in an amount to be determined by the court.

“(e) Such cases shall be advanced on the docket and given a preference setting over all other cases in the court of appeals and the supreme court. The courts may suspend all rules concerning the time for filing briefs and the docketing of cases.

“Subchapter E. Designation of Facility and Transportation

“Section 58. Designation of In-Patient Mental Health Facility. In the Order for Temporary Mental Health Services or Order for Extended Mental Health Services specifying in-patient care, the court shall commit the patient to a designated mental health facility.

“Section 59. Commitment to a Private Mental Hospital. The court may order a patient committed to a private mental hospital at no expense to the state upon:

“(1) application signed by the patient or by his guardian or friend requesting that the patient be placed in a designated private mental hospital at the expense of the patient or the applicant; and

“(2) agreement in writing by the head of the private mental hospital to admit the patient and to accept responsibility for him in accordance with the provisions of this code.

“Section 60. Commitment to an Agency of the United States. (a) Upon receiving written notice from an agency of the United States operating a mental hospital stating that facilities are available and that the patient is eligible for care

or treatment therein, the court may order a patient committed to the agency and may place the patient in the custody of the agency for transportation to the mental hospital.

"(b) Any patient admitted pursuant to order of a court to any hospital operated by an agency of the United States within or without the state shall be subject to the rules and regulations of the agency.

"(c) The head of the hospital operated by such agency shall have the same authority and responsibility with respect to the patient as the head of a state mental hospital.

"(d) The appropriate courts of this state retain jurisdiction at any time to inquire into the mental condition of the patient so committed and the necessity of his continued hospitalization.

"Section 61. Person Authorized to Transport Patient. (a) The court may authorize a relative or other responsible person having a proper interest in the welfare of the patient to transport him to the designated mental health facility.

"(b) If the head of the designated facility advises the court that facility personnel are available for the purpose, the court may authorize the head of the facility to transport the patient to the designated mental health facility.

"(c) Otherwise, the court may authorize the sheriff or constable to transport the patient to the designated mental health facility.

"Section 62. Writ of Commitment. The court shall direct the clerk of the court to issue a writ of commitment in duplicate directed to the person authorized to transport the patient, commanding him to take charge of the patient and to transport the patient to the designated mental health facility.

"Section 63. Transcript. The clerk of the county court shall prepare one certified transcript of the proceedings in the hearing on Court-Ordered Mental Health Services. Such transcript shall accompany the patient to the designated mental health facility and shall be delivered to the facility personnel in charge of admissions by the person authorized by the court to transport the patient. The clerk shall send with the transcript any available information concerning the medical, social, and economic status and history of the patient and his family.

"Section 64. Transportation of Patients. (a) Friends and relatives of the patient at their own expense may accompany him to the mental health facility.

"(b) Every female patient shall be accompanied by a female attendant unless accompanied by her father, husband, or adult brother or son during conveyance to the mental health facility.

"(c) The patient shall not be transported in a marked police or sheriff's car or accompanied by officers in uniform if other means are available.

"Section 65. Acceptance of Patient Acknowledged. The head of the mental health facility, upon receiving a copy of the writ of commitment and admitting a patient, shall give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to him and shall file a copy of the statement with the clerk of the committing court.

"Subchapter F. Furlough, Discharge, and Termination of Orders

"Section 66. Periodic Examination Required. The head of a mental health facility shall cause every patient to be examined as frequently as practicable, but not less often than each six months.

"Section 67. Plan for Continuing Care. (a) Before the furlough or discharge of a patient, the head of the mental health facility shall, in consultation with the patient and in accordance with department rules, develop a plan for continuing care for a patient for whom he determines the care is required. The plan will address the mental health and physical needs of the client. A patient to be discharged may refuse the services provided for by this section.

"(b) If the county in which the patient will reside is served by a community mental health and mental retardation center established pursuant to Section 3.01,

Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), that has been designated by the commissioner to perform continuing care services or if a patient seeks continuing care from a provider other than a facility or other provider designated by the commissioner, and if continuing care by that facility or by another provider that agrees to accept the referral is appropriate, the head of the mental health facility shall deliver the plan and other appropriate records to the community center or provider.

"(c) A community mental health and mental retardation center's involvement in discharge planning and continuing care services shall be to the extent that the center's resources have been determined by the commissioner to be available for those purposes.

"Section 68. Persons Charged with Criminal Offense. The sections of this code concerning the discharge, furlough, and transfer of a patient are not applicable to a person charged with a criminal offense who is admitted in accordance with Section 5, Article 46.02, Code of Criminal Procedure, 1965, as amended.

"Section 69. Pass or Furlough from In-Patient Care. (a) The head of a facility to which a patient has been admitted pursuant to an Order for Temporary or Extended In-Patient Mental Health Services may permit a patient to leave the facility for a period not to exceed 72 hours pursuant to a pass or for a longer period pursuant to a furlough. A pass or furlough may be subject to specified conditions.

"(b) A patient permitted to leave the facility pursuant to a pass or furlough may be taken into custody, detained, and returned to the facility if the patient violates the conditions of the pass or furlough or if his condition so deteriorates that his continued absence from the facility is no longer appropriate.

"(c) If the head of a facility has reason to believe that a person permitted to leave the facility pursuant to a pass or furlough should be taken into custody, detained, and returned to the facility, the head of the facility may secure the person's detention and return to the facility pursuant to Section 70 of this code.

"(d) A furlough may be revoked only after an administrative hearing held within 72 hours of the person's return to the facility, pursuant to rules and regulations adopted by the department. The hearing shall be before a hearing officer, who may be a mental health professional so long as the professional is not directly involved in the treatment of the patient. The hearing shall be informal, but the patient shall be entitled to present information and argument. After the hearing, the hearing officer shall determine whether the requirements of Subsection (b) of this section have been met. If the hearing officer determines that the furlough should be revoked, that decision and an explanation of the reasons for it and the information relied upon shall be made in writing and placed in the patient's file. If the hearing officer determines that the furlough should not be revoked, the patient shall again be permitted to leave the facility pursuant to the furlough.

"(e) Upon the furlough of a patient pursuant to this section, the head of the facility shall notify the court which issued the commitment order.

"Section 70. Return to In-Patient Care. (a) A peace or health officer shall take into custody, detain, and return to the facility as rapidly as possible a patient whose return is authorized either by a certificate prepared under Subsection (b) of this section or a court order issued under Subsection (c) of this section.

"(b) The head of a facility to which a patient was admitted for court-ordered in-patient mental health services may sign a certificate authorizing the return of an identified patient to the facility, if he reasonably believes that:

"(1) the patient is absent from the facility without authority; or

"(2) the patient was permitted to leave the facility pursuant to a pass or furlough and either:

"(A) the patient has violated conditions imposed upon the pass or furlough;

or

"(B) the patient's condition has so deteriorated as to render his continued absence from the facility inappropriate.

"(c) A magistrate may issue an order directing any peace or health officer to take a patient into custody upon the filing with the magistrate of a certificate by the head of the facility to which the patient was admitted that meets the requirements of Subsection (b) of this section.

"(d) A peace or health officer may take a patient into custody pursuant to this section without having in his possession at the time the certificate or court order authorizing this action.

"Section 71. Discharge from Court-Ordered In-Patient Mental Health Services. (a) The head of a facility to which a person has been committed for temporary or extended in-patient mental health services shall discharge the person upon expiration of the court order.

"(b) The head of a facility may, at any time prior to the expiration of an order for temporary or extended mental health services, discharge the person upon his determination that the person no longer meets the criteria for court-ordered mental health services. A discharge under this subsection terminates the court order. Any person discharged under this subsection shall not again be compelled to submit to involuntary mental health services except pursuant to a new order entered in accordance with the provisions of this code.

"(c) Before determining to discharge a person under Subsection (b) of this section, the head of a facility shall consider whether further court-ordered mental health services on an out-patient basis would be appropriate on a furlough pursuant to Section 69 of this code or a modified order directing the person to participate in out-patient mental health services pursuant to Section 54 of this code.

"(d) Upon discharging a person under this section, the head of the facility shall prepare a Certificate of Discharge and file it with the court that entered the order.

"Section 72. Termination of an Order for Out-Patient Mental Health Services. At any time prior to the expiration of an order for out-patient mental health services, the individual responsible for those services shall request that the order be terminated if he determines that the person no longer meets the criteria for court-ordered mental health services. At the request of an individual responsible for court-ordered out-patient mental health services, the court which entered an order directing a person to participate in out-patient care may consider whether the order should be terminated. The request shall specify the reasons why termination is requested. Upon a determination that the person no longer meets the criteria for court-ordered mental health services, the court may terminate the order.

"CHAPTER 4. GENERAL ADMISSION AND TRANSFER PROCEDURES FOR IN-PATIENT SERVICES

"Section 73. Authorization for Admission and Detention. (a) The head of a mental health facility is authorized to admit and detain any patient in accordance with the following procedures provided in this code:

"(1) Voluntary Admission

"(2) Emergency Detention or Protective Custody

"(3) Court-Ordered Temporary Mental Health Services

"(4) Court-Ordered Extended Mental Health Services

"(b) Nothing in this code prohibits the admission of voluntary patients to private mental hospitals in any lawful manner.

"(c) This code does not affect the admission to a state mental health facility of an alcoholic admitted in accordance with Chapter 411, Acts of the 53rd Legislature, 1953, as amended (Article 5561c, Vernon's Texas Civil Statutes), nor the admission of a person charged with a criminal offense admitted in accordance with Section 5, Article 46.02, Code of Criminal Procedure, 1965, as amended.

"Section 74. Service of Process for Patients. The head of an in-patient mental health facility or the superintendent, supervisor, or manager of an in-patient mental health facility in which a patient is confined is the agent for service of process on the patient. The person receiving process directed to a patient shall certify that he is aware of the provisions of this Act and shall sign the certificate with his name and title. The certificate shall be attached to the citation and be returned by the serving officer. The person receiving process directed to a patient shall within three days either forward it by registered mail to the patient's legal guardian or deliver it to the patient personally, whichever appears to be in the best interest of the patient.

"Section 75. Transfer to State Mental Hospital. (a) The department may transfer a patient from one state mental hospital to another whenever such transfer is deemed advisable, except that a voluntary patient may not be transferred without his consent.

"(b) The head of a private mental hospital, upon notice to the committing court and to the department, may for any reason transfer an involuntary patient to a state mental hospital designated by the department.

"Section 76. Transfer to Private Mental Hospital. The department may transfer an involuntary patient to a private mental hospital, or the head of a private mental hospital may transfer an involuntary patient to another private mental hospital, at no expense to the state, upon:

"(1) application signed by the patient or by his guardian or friend requesting such transfer to a private mental hospital at the expense of the patient or applicant; and

"(2) agreement in writing by the head of the private mental hospital to admit the patient and to accept responsibility for him in accordance with the provisions of this code; and

"(3) notice in writing of the transfer to the committing court.

"Section 77. Transfer to an Agency of the United States. The department or the head of a private mental hospital may transfer an involuntary patient to an agency of the United States upon notice to the committing court and notification by the agency that facilities are available and that the patient is eligible for care or treatment therein; provided, however, that the transfer of any involuntary patient to an agency of the United States shall be made only after an order approving the same has been entered by the county judge of the county of residence of the patient.

"Section 78. Transfer to Schools for Mentally Retarded. The head of a mental hospital under the control and management of the Texas Department of Mental Health and Mental Retardation may transfer persons under involuntary commitment to the mental hospital of which he is head to a state school for the mentally retarded under control and management of the department when an examination of such person indicates symptoms of mental retardation to the extent that training, education, rehabilitation, care, treatment, and supervision in a state school for the mentally retarded would be in the best interest of such person. A certificate evidencing the diagnosis of mental retardation and containing the recommendation of the head of the mental hospital that such person be transferred to a designated state school for the mentally retarded shall be furnished the committing court. No transfer shall be made until the judge of the committing court has entered an order approving the transfer.

"Section 79. Transfer of Records. The head of the mental hospital from which a patient is transferred shall send the patient's appropriate hospital records or copy thereof to the head of the mental hospital to which the patient is transferred.

"CHAPTER 5. RIGHTS OF PATIENTS

"Section 80. Rights and Responsibilities of Mentally Ill Persons. (a) Every mentally ill person in this state shall have the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and the

constitution and laws of the State of Texas. Absent specific provisions of law to the contrary presented under special procedures, every patient shall have the right to register and vote at elections; the right to acquire, use, and dispose of property including contractual rights; the right to sue and be sued; all rights relating to the granting, use, and revocation of licenses, permits, privileges, and benefits under law; the right to religious freedom; and rights concerning domestic relations.

"(b) All patients receiving mental health services pursuant to the provisions of this code have the following rights:

"(1) to appropriate treatment for their mental illness in the least restrictive appropriate setting available consistent with the protection of the patients and the community;

"(2) to be free from unnecessary or excessive medication;

"(3) to refuse to participate in research programs;

"(4) to individualized treatment plans and to participate in such planning; and

"(5) a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such persons with regard to personal needs.

"(c) All patients receiving involuntary in-patient mental health services have the right to be informed verbally and in writing within 24 hours of admission, in the person's primary language, in simple nontechnical terms, of the rights included in Sections 80 and 81 of this code.

"Section 81. Additional Rights of Patients Receiving In-Patient Mental Health Services. (a) Subject to the general rules and regulations of the in-patient mental health facility and except to the extent that the head of the facility determines that it is necessary for the welfare of the patient to impose restrictions, every patient in an in-patient mental health facility has the following rights:

"(1) to receive visitors;

"(2) to communicate with persons outside the facility; and

"(3) to communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the attorney general of the state.

"(b) Any restriction imposed by the head of the facility on the exercise of these rights for the welfare of a particular patient and the reasons for the restriction shall be made a part of the clinical record of the patient. There shall be no restriction of communication between the patient and an attorney, where the attorney-client relationship is established.

"Section 82. Care and Treatment of Patients. The head of an in-patient mental health facility shall provide adequate medical and psychiatric care and treatment for every patient in accordance with the highest standards accepted in medical practice. The head of an in-patient mental health facility may give the patient accepted psychiatric treatment and therapy.

"Section 83. Right to Presumption of Competency. Court-ordered mental health services or emergency detention under this code or receipt of voluntary mental health services shall not constitute a determination or adjudication of mental incompetency and shall not abridge the person's rights as a citizen or the person's property rights or legal capacity. Mental competency is presumed in the absence of a contrary judicial determination under the provisions of the Texas Probate Code.

"Section 84. No Effect on Guardianship. No action taken or determination made under this code and no provision of this code shall affect any guardianship established in accordance with law.

"Section 85. Writ of Habeas Corpus. Nothing herein shall be construed to abridge the right of any person to a writ of habeas corpus.

"Section 86. Physical Restraints. No physical restraint shall be applied to the person of a patient unless prescribed by a physician, and if applied the restraint

shall be removed as soon as possible. Every use of physical restraint and the reasons therefor shall be made a part of the clinical record of the patient under the signature of the physician who prescribed the restraint.

"Section 87. Disclosure of Information. Mental health facility records which directly or indirectly identify a patient, former patient, or proposed patient shall be kept confidential except where disclosure is permitted by other state law.

"CHAPTER 6. PRIVATE MENTAL HOSPITALS

"Section 88. License Required. Ninety days after the effective date of this code, no person or political subdivision may operate a mental hospital unless licensed to do so by the department.

"Section 89. Physician in Charge. Every licensed private mental hospital shall be in the charge of a physician who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology or who has had at least three years experience as a physician in psychiatry in a mental hospital.

"Section 90. Application for License. (a) Application for license to operate a private mental hospital shall be made on forms prescribed by the department. The department shall prepare the application forms and make them available upon request. The application shall be sworn to and shall set forth:

"(1) the name and location of the mental hospital;

"(2) the name and address of the physician to be in charge of hospital care and treatment of mental patients;

"(3) the names and addresses of the owners of the hospital, including the officers, directors, and principal stockholders if the owner is a corporation or other association;

"(4) the bed capacity to be authorized by the license;

"(5) the number, duties, and qualifications of the professional staff;

"(6) a description of the equipment and facilities of the hospital;

"(7) such other information as the department may require, which may include affirmative evidence of ability to comply with such standards, rules, and regulations as the department may prescribe.

"(b) The applicant shall submit a plan of the premises to be occupied as a mental hospital, describing the buildings and grounds and the uses intended to be made of the various portions of the premises.

"Section 91. License Issuance. (a) After receipt of proper application for license and the required fees, the department shall make such investigation as it deems desirable. If the department finds that the premises are suitable and that the applicant is qualified to operate a mental hospital in accordance with the requirements and standards established by law and by the department, the department shall issue a license authorizing the designated licensee to operate a mental hospital on the premises described and for the bed capacity specified in the license. However, if operation of the mental hospital involves acquisition, construction, or modification of a facility, a change in bed capacity, provision of new services, or expansion of existing services for which a certificate of need or an exemption certificate is required under the Texas Health Planning and Development Act, the department shall not issue the license unless and until the certificate of need or the exemption certificate has been granted to the applicant under that Act.

"(b) Subject to the applicable provisions of the Texas Health Planning and Development Act, the authorized bed capacity may be increased at any time upon the approval of the department and may be reduced at any time by notifying the department.

"(c) A license issued by the department is not transferable or assignable.

"(d) A license remains in effect until suspended or revoked by the department or surrendered by the licensee.

"Section 92. Application and License Fees. (a) An application fee and a license fee shall accompany the application for a license. If the department denies the license, only the license fee shall be returned. The application fee is \$25. The annual license fee payable on August 31 of each year is \$50.

"(b) All application fees and license fees received by the State Health Department under this chapter shall be deposited in the State Treasury and there set apart, subject to appropriations by the legislature, for the uses and purposes prescribed by this Act, including salaries, maintenance, travel expense, repairs, printing, and postage.

"Section 93. Denial, Suspension, or Revocation of License. (a) After giving an applicant or licensee opportunity to demonstrate or achieve compliance and after notice and opportunity for hearing, the department may deny, suspend, or revoke a license, if it finds substantial failure by the applicant or licensee to comply with the rules or regulations established by the department or the provisions of this code or with applicable provisions of the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes).

"(b) If, after investigation, the department finds that there is immediate threat to health or safety of patients or employees of a private mental hospital, the department may temporarily suspend a license for 10 days pending a hearing on the suspension order and may issue orders necessary for the welfare of the patients.

"(c) The department shall prescribe the procedure for hearings under this chapter.

"(d) The legal staff of the department may participate in the hearings.

"(e) The proceedings of the hearing shall be recorded in such form that the record can be transcribed if notice of appeal is filed.

"(f) The department shall send a copy of the decision by registered mail to the applicant or licensee notifying him of the action taken by the department. A decision denying, suspending, or revoking a license shall contain findings and conclusions upon which the decision is based.

"Section 94. Judicial Review. (a) Any applicant or licensee may appeal from the decision of the department by filing notice of appeal in the District Court of Travis County and with the department within 30 days after receiving a copy of the decision of the department.

"(b) Upon receiving notice of appeal, the department shall certify and file with the court a transcript of the proceedings in the case. By stipulation the transcript may be limited.

"(c) The court shall hear the case upon the record and may consider such other evidence as in its discretion may be necessary to properly determine the issues involved. The substantial evidence rule shall not apply.

"(d) The court may affirm or set aside the decision of the department or may remand the case for further proceedings before the department.

"(e) If the court affirms the decision of the department, the applicant or licensee shall pay the cost of the appeal; otherwise the department shall pay the cost of the appeal.

"Section 95. Rules, Regulations, and Standards. (a) The department may prescribe such rules, regulations, and standards, not inconsistent with the constitution and the laws of this state, as it considers necessary and appropriate to ensure proper care and treatment of patients in private mental hospitals.

"(b) Before any rule, regulation, or standard is adopted the department shall give notice and opportunity to interested persons to participate in the rule making.

"(c) The rules, regulations, and standards adopted by the department under this chapter shall be filed with the secretary of state and shall be published and available on request from the secretary of state.

"(d) A copy of these rules shall be sent to each licensed private mental hospital.

"Section 96. Records and Reports. The department may require every licensee to make annual, periodical, and special reports and to keep such records as it considers necessary to ensure compliance with the provisions of this code and the rules, regulations, and standards of the department.

"Section 97. Powers of Investigation. (a) The department may make such investigations as it deems necessary and proper to obtain compliance with the provisions of this code and such rules, regulations, and standards as the department prescribes.

"(b) Any duly authorized agent of the department may at any reasonable time enter upon the premises of any private mental hospital to inspect the facilities and conditions, to observe the program for care and treatment, and to question employees of the hospital and may have access for the purpose of examination and transcription to such records and documents as are relevant to the investigation.

"Section 98. Administration of Oaths; Examination of Witnesses; Subpoenas. (a) For the purpose of any investigation or other proceedings under this chapter, the department or its duly authorized agent is empowered to administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas to require the attendance and testimony of witnesses and the production of all documents or records relating to any matter under inquiry. The attendance of witnesses and the production of any such records may be required from any place within the State of Texas.

"(b) In case of refusal to obey a subpoena, the department may apply to the District Court of Travis County for an order requiring obedience to the subpoena.

"Section 99. Injunction. (a) For cause shown, the District Court of Travis County shall have jurisdiction to restrain violation of this chapter.

"(b) The department may maintain an action in the name of the State of Texas for injunction or other process against any person or political subdivision to restrain the unlicensed operation of a mental hospital.

"Section 100. Applicability of this Code. This code applies to any conduct, transaction, or proceeding within its terms which occurs after the effective date of this code, whether the patient concerned in the conduct, transaction, or proceeding was admitted or committed before or after the effective date of this code. In particular, the discharge under this code of any patient committed to a mental hospital under the prior law terminates any presumption that he is mentally incompetent. However, a proceeding for the commitment of a person to a state mental hospital begun before the effective date of this code is governed by the law existing at the time the proceeding was begun and for this purpose the law shall be treated as still remaining in force. Unless these proceedings are completed within nine months after the effective date of this code they shall be governed by the provisions of this code."

SECTION 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 3. This Act takes effect September 1, 1983.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Farabee moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 421 WITH HOUSE AMENDMENT

Senator Farabee called **S.B. 421** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.
Committee Amendment No. 1 - Carriker

Amend P. 4, Section 8, line 21 by deleting the word "five" and substituting "not more than nine (9)".

The amendment was read.

Senator Farabee moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 26, Nays 0.

Absent: Glasgow, Henderson, McFarland, Parker, Parmer.

SENATE RESOLUTION 512

Senator Truan offered the following resolution:

S.R. 512, Welcoming Queen Brenda Lee Martinez and other contestants in the Feria de las Flores, sponsored by LULAC Council Number 1 of Corpus Christi.

The resolution was read and was adopted.

**SESSION TO CONSIDER EXECUTIVE
APPOINTMENTS**

The President announced the time had arrived to consider the Executive appointments to agencies, boards and commissions. Notice of submission of these names for consideration was given by Senator Howard yesterday.

NOMINEES CONFIRMED

Senator Howard moved confirmation of the nominees reported by the Subcommittee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

The following nominees, as reported by the Subcommittee on Nominations, were confirmed by the following vote: Yeas 29, Nays 0.

Absent: Henderson, McFarland.

Members, Texas Board of Corrections: **MRS. DERALYN RIFES DAVIS**, Tarrant County; **JOSEPH V. LaMANTIA, JR.**, Hidalgo County; **THOMAS R. McDADE**, Harris County.

Member, Texas State Board of Examiners of Professional Counselors: **LOUIS S. PARKER, JR.**, Travis County.

Member, Radiation Advisory Board: **WILLIAM G. HENDRICK**, Travis County.

Member, Texas Sesquicentennial Museum Board: **JOE HIRAM MOORE**, Travis County.

Judge, 67th Judicial District, Tarrant County: **GEORGE ALLEN CROWLEY**, Tarrant County.

Judge, 231st Judicial District, Tarrant County: **MARYELLEN HICKS**, Tarrant County.

Member, Texas Amusement Machine Commission: PERRY OSWIN CHRISMAN, Dallas County.

Member, State Board of Barber Examiners: KEN K. GJEMRE, Dallas County.

Member, Board of Directors, Brazos River Authority: PAUL H. HARVEY, JR., Hill County.

Member, Advisory Council on Community Affairs: SIMON CASPER CORNELIUS, Victoria County.

Member, State Commission on Judicial Conduct: (Appointed by State Bar of Texas Board) ROBERT H. PARSLEY, Harris County.

Member, Texas Mining Council: ROBERT LANDIS ARMSTRONG, Travis County.

Members, Texas Surplus Property Agency: JESS M. IRWIN, JR., Travis County; ROBERT ARTHUR LANSFORD, Travis County.

SENATE CONCURRENT RESOLUTION 58 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

S.C.R. 58, Directing the Department of Human Resources to arrange for an evaluation of the Child Support Enforcement Program to assess the effectiveness of the program during 1983 and 1984.

The resolution was read second time.

Senator Farabee offered the following amendment to the resolution:

Amend **S.C.R. 58** by inserting the words "necessary staff and" between the words "of" and "all" on line 34.

Explanation: This clarifies the legislative directive to DHR and the Attorney General to ensure that the staff necessary to administer the program will be transferred at the same time as the enforcement authority and other resources are transferred.

The amendment was read and was adopted.

The resolution as amended was adopted.

SENATE JOINT RESOLUTION 12 ON SECOND READING

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.J.R. 12, Proposing a constitutional amendment to authorize use of the permanent school fund to guarantee school bonds.

The resolution was read second time and was passed to engrossment.

SENATE JOINT RESOLUTION 12 ON THIRD READING

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.J.R. 12** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE SENATE BILL 384 ON SECOND READING

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 384, Relating to the guarantee of certain school district bonds.

The bill was read second time and was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 384 ON THIRD READING

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 384** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

SENATE BILL 405 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 405, Relating to the operation and continuation of the Office of Consumer Credit Commissioner and to its regulatory responsibility concerning pawnshops and certain lenders.

The bill was read second time.

Senator McFarland offered the following committee amendment to the bill:

Amend **S.B. 405** as follows:

On page 2, strike lines 1 through 7 and substitute in lieu thereof the following:

(b) With respect to loans that an employee benefit plan makes to participants in such plan or to their beneficiaries, an employee benefit plan that is subject to the provisions of Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sections 1001-1114, as amended, shall not be subject to Chapter 15 or Subtitle 2 of this Title and is not required to obtain a license under this Title.

On page 28, strike lines 15 and 16 and substitute in lieu thereof the following:

business entity, the eligibility requirements of Subdivision (1) of Subsection (a) of this section apply to each operator and each

The committee amendment was read and was adopted.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 1

Amend **S.B. 405** by adding new sections 29-37 thereto and by replacing section 29 thereof with new section 38.

SECTION 29: Article 1.01, Title 79, Revised Statutes (Article 5069-1.01, Vernon's Texas Civil Statutes), is amended by adding Subsections (g) and (h) to read as follows:

(g) “Credit card transaction” means a transaction in which a card is or may be used to debit an open-end account in connection with the purchase or lease of goods or services or the lending of money.

(h) “Merchant discount” means any charge, fee or discount which a creditor imposes upon a seller or lessor of goods or services in connection with a purchase or lease made by an obligor using an open-end line of credit established by the obligor with the creditor pursuant to an agreement between such creditor and the obligor, under which agreement, (1) by means of a credit card, the obligor may obtain loans from the creditor, which may be advanced by other participating persons, and lease goods or purchase goods or services from more than one participating lessor or seller who honor the creditor’s card, and the creditor will pay the other participating persons, lessors or sellers the cost of such goods or services less such charge, fee or discount, and the obligor is obligated under his or her agreement with the creditor to pay the creditor the amount of such loans or the cost of such leases or purchases; and (2) the unpaid balance of such loans, leases, and purchases and any interest thereon are debited to the obligor’s account with the creditor under the obligor’s agreement with the creditor; and (3) interest is not precomputed but may be computed on the balances of the obligor’s account outstanding with the creditor from time to time; and (4) the obligor may defer payment of any part of the balance. The term includes all such charges, fees and discounts on revolving triparty accounts as described in Article 15.01(l) of this Title. The term does not apply to such charges, fees and discounts on accounts in which the entire balance is due and payable in full each month and no interest is charged when the obligor pays in accordance with such terms.

SECTION 30: Section (b), Article 1.04, Title 79, Revised Statutes (Article 5069-1.04, Vernon’s Texas Civil Statutes), is amended by adding Subsections (4), (5), and (6) to read as follows:

(4) Any credit agreement described in Section (a) of Article 1.11 of this Title is subject to the terms, rates and other provisions of the said Article 1.11 as well as the terms, rates and other provisions of this Article 1.04.

(5) Notwithstanding any other provision of law, any creditor who imposes a merchant discount as defined in Article 1.01(h) of this Title in connection with any extension of credit may not charge in connection therewith a rate in excess of the ceiling allowed under Article 15.02(d) of this Title.

(6) Any credit card transaction with a creditor, as defined in Section (f) of Article 15.01 of this Title, that involves a revolving loan account or a revolving triparty account, as defined in Sections (k) and (l) of Article 15.01 of this Title, is subject to the terms, rates and other provisions of Article 15.02 of this Title.

SECTION 31. Section (d), Article 1.04, Title 79 Revised Statutes (Article 5069-1.04(d), Vernon’s Texas Civil Statutes), is amended to read as follows:

(d) The consumer credit commissioner shall compute, on the computation dates of December 1, March 1, June 1, and September 1 of each year, the quarterly and annualized ceilings for the next succeeding calendar quarter beginning January 1, April 1, July 1, and October 1, respectively. For each computation date, the computation under Section (a)(2) of this Article for the quarterly ceiling is the average of all the computations under Section (a)(1) of this Article for auctions occurring during the three calendar months preceding the computation date. For each computation date, the computation under Section (a)(2) of this Article for the annualized ceiling is the average of all the computations under Section (a)(1) of this Article for auctions occurring during the ~~12~~ 3 calendar months preceding the computation date.

SECTION 32. Subsections (n)(5) and (n)(6), Article 1.04, Title 79, Revised Statutes (Article 5069-1.04(n)(5) and (n)(6), Vernon’s Texas Civil Statutes), are amended to read as follows:

(5) Any person (except a person subject to Chapter 24 of the Insurance Code) engaged in the business of extending open-end credit primarily for personal, family or household use and charging a rate or amount under authority of this Article 1.04 shall be subject to either the applicable Chapter in Subtitle 2 of this Title or Chapter 15 of this Title, and Subsections (b)(4), (b)(5); or (b)(6) of this Article, as applicable, except to the extent inconsistent with this Article; the parties to such open-end accounts and their assignees shall comply with and have all other rights, duties and obligations under the applicable Chapter, except to the extent inconsistent with this Article.

SECTION 33. Title 79, Revised Civil Statutes of Texas, 1925 as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 1.11 to read as follows:

1.11 Limitations on Certain Open-End Account Credit Agreements.

(a) On any open-end account credit agreement pursuant to which credit card transactions are or may be made, in which the creditor relies upon one of the ceilings provided by Article 1.04 of this Title, the provisions of Article 1.04, as modified by Section (c) of this Article 1.11, apply to all amounts owed for credit card transactions entered into under such agreement if: 1) the creditor complies with subsection (b) of this Article 1.11 as to such credit card transactions and 2) no merchant discount, as defined in Section (h) of Article 1.01 of this Title, is imposed or received by such creditor in connection with such credit card transactions.

(b) On any open-end account credit agreement described in Subsection 1.11(a), no interest or time price differential may be charged for a billing cycle if the obligor's payments during such cycle equal or exceed the balance owed under such agreement at the end of the immediately preceding billing cycle or if no balance is owed at the end of such immediately preceding billing cycle.

(c) Notwithstanding section (b)(1) of Article 1.04 of this Title, if a computation under section (a)(1), (a)(2), (c) or (d) of Article 1.04 of this Title is more than twenty-one (21) percent per annum, the ceiling under this Article for the amount owed on credit card transactions under an open-end account credit agreement described in Section (a) of this Article 1.11 is twenty-one (21) percent per annum.

(d) The remainder of Article 1.04, including Section (m) thereof, applies to any credit agreement described in Section (a) of this Article 1.11 and to all credit card transactions under such agreement.

(e) Notwithstanding section (a) of this Article 1.11 or any other provision of law, a retail seller may sell open-end account credit agreements between such seller and its customers, or any balances thereunder, to a purchaser who purchases a substantial portion of such seller's open-end account credit agreements, or any balances thereunder, at such terms, conditions and price as may be agreed, in accordance with Article 6.07 of this Title, and charges, fees and discounts on such sales and purchases shall not be deemed to be a merchant discount or to disqualify such credit agreements or any balances thereunder from being subject to a ceiling in Article 1.04 of this Title as modified by Section (c) of this Article 1.11 or from coverage by this Article 1.11, or to subject such accounts to the limitations of Article 15.02(d) of this Title.

SECTION 34: Sections (c), Article 15.01, Title 79, Revised Statutes (Article 5069-15.01(c), Vernon's Texas Civil Statutes), is amended to read as follows:

(c) "Average Daily Balance" means the sum of each day's ending balance in an account during the previous a billing cycle (less any interest included in such balance), divided by the number of days in the previous such billing cycle. Such sum may include purchases and loans posted to the account during the previous billing cycle and such sum shall be reduced by all payments and credits during the previous billing cycle. Each day's ending balance shall begin with the previous day's ending

balance and may include loans posted to the account on such day, and may also include, to the extent permitted by Article 15.02(d) of this chapter, leases of goods or purchases of goods or services posted to the account on such day, and shall be reduced by credits and payments posted to the account on such day.

SECTION 35: Section (d) of Article 15.02, Title 79, Revised Statutes (Article 5069-15.02, Vernon's Texas Civil Statutes) is amended to read as follows:

(d) Interest may not accrue upon transactions except for the amount or portion thereof which remains unpaid at the time of the billing cycle immediately following the billing cycle in which the customer was given an initial opportunity to pay for the purchases. Notwithstanding Article 1.04 of this Title or any other provision of law, on any revolving loan account as defined in Article 15.01(k) of this Title or any revolving triparty account as defined in Article 15.01(1) of this Title, pursuant to which credit card transactions as defined in Article 1.01(g) of this Title may be made or in connection with which account a merchant discount as defined in Article 1.01(h) of this Title is imposed, charged or collected, the rate of interest from time to time in effect on such account is subject to and may not exceed the quarterly ceiling from time to time in effect as computed pursuant to Article 1.04 of this Title and as further limited by this section (d), and the ceiling on such account is subject to quarterly adjustment. If a computation of the quarterly ceiling under Article 1.04(a)(2) of this Title is more than 22% per annum, the ceiling under this provision shall be 22% per annum. If the computation under Article 1.04 (a)(2) of this Title is less than 14% per annum, the ceiling under this provision shall be 14% per annum.

Notwithstanding any other provision of this Title, a creditor subject to this section (d) shall not be required to disclose any decreases which may from time to time occur in the rate on its account. No fees shall be charged or collected in connection with an account subject to this Chapter, unless authorized by statute.

SECTION 36: Section (e) of Article 15.02, Title 79, Revised Statutes (Article 5069-15.02, Vernon's Texas Civil Statutes) is amended to read as follows:

(e) As an alternative to the rates authorized by Section (a) of this Article, the parties may agree to any rate calculated pursuant to Section (d) of this Article not exceeding a rate authorized by Article 1.04 of this Title. Except as provided in Section (d) of this Article, as an alternative to the rates authorized by Section (a) of this Article, the parties may agree to any rate not exceeding a rate authorized by Article 1.04 of this Title.

SECTION 37. Sections 29-36 of this Act take effect July 1, 1983 contingent on this Act receiving the vote required by Article 3 Subsection 39 of the Constitution of the State of Texas. If this Act does not receive the vote required by Article 3 Subsection 39 of the Constitution of the State of Texas, Sections 29-36 will take effect September 1, 1983. Notwithstanding any contrary provision of Title 79, the annualized ceilings which took effect during the last two quarters of 1982 and expire during the last two quarters of 1983 and the annualized ceilings which took effect in the first two quarters of 1983 and expire in the first two quarters of 1984 shall, as of the date Sections 29-36 take effect, be deemed to equal 18%, until such expiration dates, and the consumer credit commissioner is hereby instructed to publish such revision in The Credit Code Letter within two weeks from the date this bill takes effect and also to cause same to be published in the Texas Register as soon as possible. Notwithstanding any contrary provision of Title 79, for purposes of Article 15.02(d) of Title 79 as hereby amended, the quarterly ceiling applicable under such Article will be recomputed in accordance with Section 35 of this Act and, as so recomputed, will take effect on the effective date of such section, and the Consumer Credit Commissioner is hereby instructed to publish such recomputed quarterly ceiling applicable under Article 15.02(d) in The Credit Code Letter within two weeks from the date such section takes effect and to cause same to be published

in the Texas Register as soon as possible. Notwithstanding the foregoing, a credit card transaction occurring before the effective date of Sections 29-36 is governed by the law in effect prior to the amendments made by such sections, and that law is continued in effect for that purpose. Any credit card transaction occurring on or after the effective date of Sections 29-36 shall be governed by the law as amended by such sections and by this section.

SECTION 38: The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

Senator McFarland offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Amendment No. 1 by inserting the following as Section 37 of Amendment No. 1 and renumbering subsequent sections accordingly:

SECTION 37. (a) Section 5 of this Act takes effect September 1, 1983.

(b) Except as otherwise provided, this Act takes effect immediately.

The amendment to Floor Amendment No. 1 was read and was adopted.

Question recurring on the adoption of Floor Amendment No. 1 as amended, Floor Amendment No. 1 as amended was adopted.

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 3

Amend S.B. 405 by deleting subsections (4) beginning on line 16, page 4, in its entirety.

The amendment was read and was adopted.

On motion of Senator McFarland and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

SENATE BILL 405 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 405 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber
April 21, 1983

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 203, Relating to the practice and regulation of dentistry and dental hygiene and to certain confidential records. (With amendments)

C.S.S.B. 283, Relating to the effect of the value of property or service stolen, damaged, or destroyed on the penalty imposed for theft, theft of service, or criminal mischief. (With amendment)

S.B. 319, Relating to the regulation of nepotism in government. (With amendment)

S.B. 343, Relating to the period of limitations applicable to a prosecution for certain offenses involving sexual conduct. (With amendment)

S.B. 595, Relating to the authorization of a city or town to contract and levy assessments for the relocation or replacement of sanitation sewer laterals on private property, to certain notice requirements, and to certain payment procedures. (With amendment)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

COMMITTEE SUBSTITUTE SENATE BILL 440 ON SECOND READING

Senator Harris moved to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 440, Relating to the regulation and licensing of pari-mutuel wagering on horse racing; providing penalties.

POINT OF ORDER

Senator Sarpalius raises a point of order under Article III, Sec. 33, of the Texas Constitution against further consideration of **S.B. 440** on the ground that the bill is for the raising of revenue and may not originate in the Senate.

The President ruled as follows:

This section of the Constitution states:

All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

Because there is sometimes confusion about the jurisdiction of the Chair to rule on a "constitutional" point of order, the Chair would note that Article III, Section 33, is a procedural provision on which the chair must rule.

Since **S.B. 440** obviously originated in the Senate, the sole issue to be determined is whether the bill is "for raising revenue" in the constitutional sense. Section 33 has been consistently interpreted by presiding officers of the Texas Senate, as well as by the courts of this state, as applying to bills which, in Mr. Justice Story's classic definition, "levy taxes in the strict sense of the word and . . . not . . . to bills for other purposes, which may incidentally create revenues." [J. Story, Commentaries on the Constitution of the United States (M. Bigelow ed., 5th ed. 1891), Section 880; Day Land and Cattle Co. v. State, 68 Tex. 526, 4 S.W. 865 (1887).] A review of applicable legislative and parliamentary precedents shows clearly that Section 33 extends only to bills the primary purpose of which is to raise revenue for the general

support of state government, and not to bills that happen to create revenue in connection with a regulatory purpose. [Raymond v. Kibbe 95 S.W. 727 (Tex.Civ.App., 1906, writ ref'd)]

Senate Bill 440 is entitled "An act relating to the regulation and licensing of pari-mutuel wagering on horse racing . . .". The bill provides for the legalization of pari-mutuel wagering on horse racing on a local option basis to be regulated by a Texas Horse Racing Commission. The bill would produce state revenue by imposing license fees (Section 7.05) and requiring that a share of each pari-mutuel pool be collected by the Comptroller and deposited in the State Treasury (Section 3.08).

There is no serious basis under Texas law to contend that a bill imposing license fees in connection with the regulation of an occupation must originate in the House of Representatives. [See Raymond v. Kibbe, supra.] The Chair is of the opinion that the diversion of a share of each pari-mutuel pool to the State Treasury is the only feature of the bill that presents a substantial issue under Section 33. It has been suggested that the pledge of this revenue to aid to families with dependent children shows a purpose to raise revenue.

While the provision in question undoubtedly would produce revenue, that alone does not bring the bill within the scope of the constitutional prohibition. Review of the relevant authorities shows that the bill must be examined as a whole to determine whether the revenue producing feature is central to the purpose of the legislation or is merely incidental to a different, non-revenue producing purpose. Only if the production of revenue is central does Section 33 apply. [Stuard v. Thompson, 251 S.W. 277 (Tex.Civ.App.—Fort Worth 1923, no writ).]

The Chair believes that in making this determination, it is not enough that the Senate merely comply with the letter of the law, as defined by the courts; this body should also respect the spirit and purpose of Section 33, giving due regard to the prerogative it confers on the House of Representatives. Even from this point of view, however, it is apparent to the Chair that the primary purpose of S.B. 440 is the legalization of horse race wagering in Texas. The Chair is also of the opinion that those provisions of the bill that would in fact produce revenue are merely incidental to this purpose. Because they are incidental, the fact that the resulting revenue may be used for aid to families with dependent children is irrelevant to the issue at hand.

For these reasons, the point of order is respectfully overruled.

POINT OF ORDER

Senator Leedom raises a point of order under Article I, Sec. 28 of the Texas Constitution on the ground that this bill is a suspension of the present laws regulating horse racing by local or statewide referendum and that the Constitution states that no power of suspending laws shall be exercised except by the Legislature.

The President overruled the point of order, stating it was a Constitutional question on which the Chair does not rule, not a procedural question on which the Chair does rule.

The motion to suspend regular order prevailed by the following vote: Yeas 21, Nays 10.

Yeas: Brooks, Doggett, Glasgow, Harris, Henderson, Kothmann, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire.

Nays: Blake, Brown, Caperton, Edwards, Farabee, Howard, Jones, Leedom, Sarpalius, Williams.

The bill was read second time.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.S.B. 440 on page 11, line 49, by inserting the following after the period:

The stewards employed by the commission are peace officers, and their primary duty is the enforcement of this Act. Each steward as a peace officer is authorized to enforce any penal provision of law while in the course of his employment, if he is in, on, or about any horse racing enclosure licensed under this Act.

The amendment was read and was adopted.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.S.B. 440 on page 11, line 49, by inserting the following after the period: "The commission's rules adopted under this section and this Act shall be written and updated to ensure their maximum enforceability within existing constitutional guidelines."

The amendment was read and was adopted.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 3

Amend C.S.S.B. 440 on page 2, line 53, by inserting the following after the period:

All persons appointed to or employed by the commission are subject to all background checks and qualification criteria required to hold a racetrack license or other license under this Act.

The amendment was read and was adopted.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 4

Amend C.S.S.B. 440 on page 5, line 3, by inserting the following after the period:

Pursuant to their authority to conduct criminal justice information record checks as hereinafter described, the commission shall maintain and exchange pertinent intelligence data with other states and agencies.

The amendment was read and was adopted.

Senator Lyon offered the following amendment to the bill:

Floor Amendment No. 5

Amend C.S.S.B. 440 on page 4 by adding between lines 43 and 44 a new Subsection (d), Section 3.06, to read as follows:

(d) Medication or drug testing performed under Section 13.03 of this Act shall be conducted by the Texas Veterinary Medical Diagnostic Laboratory or in conjunction with or by a private or public agency that is approved by the commission and the Texas Veterinary Medical Diagnostic Laboratory and that is accredited by the American Association of Veterinary Laboratory Diagnosticians.

Charges for services performed under this section by the Texas Veterinary Medical Diagnostic Laboratory or an approved and accredited private or public agency shall be forwarded to the commission for approval as reasonable charges for the services. Charges may include, but are not limited to, expenses incurred for travel, lodging, testing, and processing of test results. The reasonable charges associated with medication or drug testing conducted under this Act shall be fully subsidized by the association receiving the services. On the approval of the charges being reasonable, the commission shall forward a copy of the charges to the association receiving the services for immediate payment. All persons performing testing services under this section and Section 13.03 of this Act must be licensed under Article 7 of this Act. A person conducting tests under this section is considered a state veterinarian for the purposes of Subsection (a) of this section.

The amendment was read and was adopted.

Senator Washington offered the following amendment to the bill:

Floor Amendment No. 6

Amend **C.S.S.B. 440** on page 2, line 33, by inserting the following after the period:

Appointments to the commission shall be made with due regard for the race, creed, sex, religion, and national origin of the appointees and the geographical distribution of the members of the commission.

The amendment was read and was adopted.

Senator Sarpalius offered the following amendment to the bill:

Floor Amendment No. 7

Amend **C.S.S.B. 440** by deleting SECTION 15.18 in its entirety and substituting in lieu thereof the following:

SECTION 15.18. ELECTION TO PROHIBIT PARI-MUTUEL WAGERING ON HORSE RACES. In any county in which the commission has issued a racetrack license, an election may be held for the purpose of prohibiting pari-mutuel wagering on horse races in the county after three years have elapsed since the date of the election approving legalization of pari-mutuel wagering. A prohibition election may be ordered only on presentation of a petition seeking the election. Except as provided by Sections 15.19 and 15.20 of this Act, the provisions of Sections 15.03-15.11 and 15.13-15.17 of this Act apply to elections held under this section.

The amendment was read.

On motion of Senator Harris, Floor Amendment No. 7 was tabled by the following vote: Yeas 17, Nays 14.

Yeas: Blake, Brooks, Harris, Henderson, Kothmann, Lyon, Mauzy, McFarland, Santiesteban, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire.

Nays: Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Howard, Jones, Leedom, Montford, Parker, Parmer, Sarpalius, Williams.

Senator Howard offered the following amendment to the bill:

Floor Amendment No. 8

Amend **C.S.S.B. 440** on page 18, Section 16.01, line 16, after the words "November 6, 1984" by adding the following:

“No county local option election may be held unless the state wide referendum has passed.”

The amendment was read and was adopted.

Senator Sarpalius offered the following amendment to the bill:

Floor Amendment No. 9

Amend C.S.S.B. 440 by deleting section 15.12 and substituting in lieu thereof the following:

SECTION 15.12. RESULTS OF ELECTION. (a) If a majority of the votes cast in the election are for the legalization of pari-mutuel wagering on horse races in the county, the commissioners court shall certify that fact to the commission not later than the 10th day after the date of the canvass of the returns.

(b) No other election may be held in the county under this Act until five years have elapsed since the date of the election.

The amendment was read and was adopted.

Senator Traeger offered the following amendment to the bill:

Floor Amendment No. 10

Amend C.S.S.B. 440 by striking all below the enacting clause and substituting in lieu thereof the following:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. This Act may be cited as the Texas Horse Racing Act.

SECTION 1.02. PURPOSES. The purposes of this Act are to encourage agriculture, the horse-breeding industry, the horse-training industry, tourism, and employment opportunities in this state related to horse racing, and to provide for the strict regulation and control of pari-mutuel wagering in connection with horse racing in counties on a local-option basis.

SECTION 1.03. DEFINITIONS. In this Act:

(1) “Person” includes any individual or entity capable of holding a legal or beneficial interest in property.

(2) “Association” means a person licensed under this Act to conduct a horse race meeting with pari-mutuel wagering.

(3) “Commission” means the Texas Horse Racing Commission.

(4) “Comptroller” means the comptroller of public accounts.

(5) “Executive secretary” means the executive secretary of the Texas Horse Racing Commission.

(6) “Race meeting” means the conducting of horse races on a day or during a period of consecutive or nonconsecutive days.

(7) “Thoroughbred horse” means a horse that is registered by the Jockey Club, New York City, New York.

(8) “Thoroughbred racing” means the form of horse racing in which Thoroughbred horses mounted by jockeys engage in a race.

(9) “Quarter horse” means a horse that is registered by the American Quarter Horse Association, Amarillo, Texas.

(10) “Quarter horse racing” means the form of horse racing in which quarter horses mounted by jockeys engage in a race over a distance of less than one-half mile.

(11) “Appaloosa horse” means a horse that is registered by the Appaloosa Horse Club, Moscow, Idaho.

(12) "Appaloosa racing" means the form of horse racing in which Appaloosa horses mounted by jockeys engage in a race.

(13) "Arabian horse" means a horse that is registered by the Arabian Horse Registry of America, Denver, Colorado.

(14) "Arabian racing" means the form of horse racing in which Arabian horses mounted by jockeys engage in a race over a distance of at least 1-1/2 miles.

(15) "Paint horse" means a horse that is registered by The American Paint Horse Association, Fort Worth, Texas.

(16) "Paint horse racing" means the form of horse racing in which paint horses mounted by jockeys engage in a race.

(17) "Enclosure" means all areas of a racing association's grounds, including the parking area, to which admission can be obtained only on payment of an admission fee or presentation of official credentials.

(18) "Pari-mutuel wagering" means the form of wagering on the outcome of horse racing in which those who wager purchase tickets of various denominations on a horse or horses and all wagers for each race are pooled and held by the racing association for distribution of the total amount, less the deductions authorized by this Act, to holders of tickets on the winning horse or horses.

(19) "Pari-mutuel pool" means the total amount of money wagered by patrons on the result of a particular race or combination of races, the total being divided into separate mutuel pools for win, place, and show, and for combinations such as the daily double when they are used.

(20) "Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of 10 cents, except in the event a minus pool occurs, the breakage shall be in multiples of five cents.

(21) "Texas-bred horse" means a horse that is sired by a stallion standing in Texas at the time of conception and foaled by a mare in Texas, except that a mare may be bred outside of Texas and brought into Texas to foal and every other foal sired and foaled under those conditions, in the mare's lifetime shall be considered "Texas-bred" if the mare is bred back to a stallion standing in Texas. In all instances any foal must qualify under the rules of the commission.

(22) "Accredited Texas-bred horse" means a Texas-bred horse that meets the accreditation requirements of his state breed registry.

(23) "Mixed racing" means a race in which different breeds participate.

(24) "State breed registry" means a designated association administering accredited Texas-bred requirements for its specific breed.

(25) "Racetrack" means a facility that is licensed under this Act for the conduct of pari-mutuel wagering on horse racing.

(26) "Racing day" means the 24-hour period ending at 12 midnight.

ARTICLE 2. TEXAS HORSE RACING COMMISSION

SECTION 2.01. CREATION. The Texas Horse Racing Commission is created.

SECTION 2.02. MEMBERSHIP. The commission consists of six members appointed by the governor, with the advice and consent of the senate, and two ex officio members who shall have the right to vote. The ex officio members are the director of the Department of Public Safety and the comptroller of public accounts.

SECTION 2.03. TERM OF OFFICE. (a) Except for the initial appointments, appointed members hold office for staggered terms of six years, with two members' terms expiring January 31 of each odd-numbered year. A member holds office until his successor is appointed and qualifies.

(b) In making the initial appointments, the governor shall designate two appointed members for terms expiring January 31, 1985, two for terms expiring January 31, 1987, and two for terms expiring January 31, 1989.

(c) The ex officio members hold office on the commission for the time for which they hold their other offices.

SECTION 2.04. RESIDENCE REQUIREMENT. An appointed member is not eligible to be a member of the commission unless he has been a resident of this state for at least 10 consecutive years.

SECTION 2.05. DISQUALIFICATIONS. A person is disqualified from being an appointed member of the commission if he owns any financial interest in a racetrack or its operation, or if he is related within the second degree by consanguinity or affinity to a person who owns any financial interest in a racetrack or its operation.

SECTION 2.06. FINANCIAL STATEMENT. An appointed member of the commission is an "appointed officer of a major state agency" within the meaning of Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes). An appointee shall also file a detailed financial statement of the type required by the Banking Department of Texas in the application for charter for state banks.

SECTION 2.07. PROHIBITED CONDUCT. A member of the commission commits an offense if he:

(1) accepts any remuneration from a racetrack association, whether the racetrack is located in this state or elsewhere;

(2) wagers or causes a wager to be placed on the outcome of a horse race conducted in this state; or

(3) accepts any part of the purse or winnings of a horse in a race conducted in this state.

SECTION 2.08. EXPENSES. Each appointed member of the commission is entitled to a per diem in an amount prescribed by legislative appropriation for each day spent in performing the duties of his office and is entitled to reimbursement for actual and necessary expenses incurred in performing those duties. The ex officio members are entitled to reimbursement for expenses from their respective agencies as provided by law for expenses incurred in the performance of their other official duties.

SECTION 2.09. OFFICES. The commission shall maintain its general office in the city of Austin. The commission may also establish branch offices.

SECTION 2.10. CHAIRMAN. (a) The members of the commission shall elect one of the members chairman to serve a term of two years.

(b) If a vote of the commission results in a tie, the chairman shall reconsider the matter and then shall vote again to resolve the tie.

SECTION 2.11. MEETINGS OF COMMISSION. (a) The commission shall hold at least six regular meetings each year on dates fixed by the commission. The commission shall make rules providing for the holding of special meetings.

(b) A majority of the commission constitutes a quorum.

(c) The commission shall keep at its general office a public record of every vote.

SECTION 2.12. EXECUTIVE SECRETARY; EMPLOYEES. (a) The commission shall employ an executive secretary and other employees as necessary to administer this Act.

(b) The commission may not employ or continue to employ a person:

(1) who owns a financial interest in a racetrack or its operation;

(2) who accepts any remuneration from a racetrack; or

(3) who is an owner, lessor, or lessee of a horse that is entered in a race in this state.

(c) The commission may not employ or continue to employ a person related within the second degree by consanguinity or affinity to a person subject to a disqualification prescribed by Subsection (b) of this section.

SECTION 2.13. EXECUTIVE SECRETARY; DUTIES. The executive secretary shall keep the records of the commission and perform other duties required by the commission.

SECTION 2.14. LEGAL REPRESENTATION. The attorney general shall designate at least one member of his staff to counsel and advise the commission and to represent the commission in legal proceedings. The attorney general shall make available to the appropriate prosecuting attorneys any information obtained regarding violations of this Act.

SECTION 2.15. RECORDS. All records of the commission that are not made confidential by other law are open to inspection by the public during regular office hours. The contents of the investigatory files of the commission, however, are not public records and are confidential except in a criminal proceeding or in a hearing conducted by the commission.

ARTICLE 3. POWERS AND DUTIES OF COMMISSION

SECTION 3.01. REGULATION AND SUPERVISION. The commission shall regulate and supervise every meeting involving wagering on the result of horse racing. All persons and things relating to the operation of those meetings are subject to regulation and supervision. The commission shall make rules for conducting horse racing involving wagering.

SECTION 3.02. POWER OF ENTRY. The commission and its authorized agents may enter the office, racetrack, or other place of business of an association at any time for the purpose of enforcing and administering this Act.

SECTION 3.03. REQUIREMENT OF BOOKS AND RECORDS. The commission shall require associations, managers, and concessionaires to keep books and records and to submit financial statements and may make reasonable rules relating to those matters.

SECTION 3.04. SUBPOENA POWER. (a) The commission or its duly appointed agents in carrying out their functions under this Act, may take testimony, require by subpoena the attendance of witnesses and the production of books, records, papers, correspondence, and documents that the commission deems advisable. Subpoenas shall be issued under the signature of the commission or its duly appointed agent and shall be served by any person designated by the commission. Any member of the commission or its duly appointed agents may administer oaths or affirmations to witnesses appearing before the commission or its duly appointed agents.

(b) In case of disobedience to a subpoena issued under this section, the commission or its duly appointed agents may invoke the aid of the appropriate state court in requiring compliance with the subpoena. Any court having jurisdiction where such person is found or transacts business may, in case of refusal to obey a subpoena issued by the commission or its duly appointed agents, issue an order requiring the person to appear and testify, to produce books, records, papers, correspondence, and documents, and failure to obey the order of the court shall be punished by the court as contempt.

SECTION 3.05. CERTIFIED DOCUMENTS. Instead of requiring an affidavit or other sworn statement in any application or other document required to be filed with it, the commission may require a certification of the document under penalty of perjury in the form the commission may prescribe.

SECTION 3.06. OFFICIALS OF RACE MEETINGS. (a) Each race meeting shall be supervised by three stewards appointed and compensated by the commission. For each race meeting, the commission shall also employ a state veterinarian and shall approve the horseshoe inspector, placing judges, patrol judges, horse identifier, starter, and all other officials appointed by the association.

(b) The commission shall make rules specifying the authority of each official, including the power of stewards to impose penalties for unethical practices or violations of racing rules. A penalty imposed by the stewards may include a fine of not more than \$5,000 or a suspension for not more than one year, or both. If, in the opinion of the stewards, the allowable penalties are not sufficient, they may refer the case to the commission for further action.

(c) The commission shall require each steward to take and pass both a written examination and a medical examination annually. The commission by rule shall prescribe the methods and procedures for taking the examinations and the standards for passing. Failure to pass an examination is a ground for refusal to issue an original or renewal steward's license or for suspension or revocation of a steward's license.

SECTION 3.07. APPEAL FROM DECISION OF STEWARDS. A final decision of the stewards may be appealed to the commission. The commission shall make procedural rules relating to those appeals. The decision of the stewards is final unless reversed by the commission or unless the commission orders otherwise.

SECTION 3.08. FUNDING. The comptroller shall deposit the state's percentage of each pari-mutuel pool in the general revenue fund. All such money shall be appropriated only to fund the Aid to Families with Dependent Children Program administered under Chapter 31, Human Resources Code. The commission shall deposit all money it collects pursuant to this Act, except the breakage, in the state treasury to the credit of a special fund to be known as the Texas Horse Racing Commission fund. The special fund may be appropriated only for the administration and enforcement of this Act. Any unappropriated money remaining in the special fund during each succeeding biennium shall be deposited in the general revenue fund and may be appropriated for any legal purpose. The legislature may also appropriate money from the general revenue fund for the administration and enforcement of this Act.

SECTION 3.09. ANNUAL REPORT. The commission shall make a report to the governor, lieutenant governor, and speaker of the house of representatives not later than January 31 of each year covering its operations and the condition of horse breeding and racing during the previous year and making whatever recommendations it considers desirable.

SECTION 3.10. COOPERATION WITH PEACE OFFICERS. The commission shall cooperate with all district attorneys, criminal district attorneys, county attorneys, the Department of Public Safety, the attorney general, and all peace officers in enforcing this Act.

ARTICLE 4. POWERS AND DUTIES OF COMPTROLLER

SECTION 4.01. BOOKS AND RECORDS. All books, records, and financial statements required by the commission under Section 3.03 of this Act are open to inspection by the comptroller.

SECTION 4.02. POWER OF ENTRY. The comptroller and his authorized agents may enter the office, racetrack, or other place of business of an association at any time for the purpose of inspecting an association's books, records, or financial statements required under Section 3.03 of this Act.

SECTION 4.03. RULES. The comptroller may adopt rules for the enforcement of his powers and duties under this Act.

SECTION 4.04. COLLECTION OF STATE'S PORTION OF PARI-MUTUEL POOL. The comptroller may prescribe by rule procedures for the collection of the state's portion of each pari-mutuel pool.

SECTION 4.05. COMPLIANCE. If an association does not comply with a rule adopted under this article or refuses to allow access to, or inspection of, any of its required books, records, or financial statements, or is shown on the records of the comptroller as being delinquent for the state's portion of the pari-mutuel pool collected by the comptroller, the comptroller shall certify that fact to the commission. On receipt of the certification, the commission shall immediately revoke or suspend the association's license.

ARTICLE 5. LICENSES GENERALLY

SECTION 5.01. FORM; CERTIFICATE; FEES. (a) The commission shall prescribe forms for applications for licenses and shall provide each licensee with a license certificate or credentials.

(b) The commission shall prescribe a reasonable license fee for each category of license issued under this Act sufficient to defray the costs of administering and enforcing this Act.

SECTION 5.02. JUDICIAL REVIEW. Judicial review of an order of the commission refusing to issue an original or renewal racetrack license or revoking or suspending a racetrack license is under the substantial evidence rule. Judicial review of an order respecting any other license is by trial de novo.

SECTION 5.03. FINGERPRINTS. (a) An applicant for any license under this Act must submit to the commission a complete set of fingerprints of the individual natural person applying for the license or, if the applicant is not an individual natural person, a complete set of fingerprints of all officers, directors, incorporators, or other members of any group of persons applying for a license under this Act.

(b) The commission shall, not later than the next day after receiving the prints, forward them by mail to the Texas Department of Public Safety. The department shall classify the prints and check them against its fingerprint files and shall certify its findings concerning the criminal record of the applicant, or the lack of a record, to the commission. A license may not be issued until the certification is made to the commission.

(c) The sheriff of any county, or any district office of the commission, shall take the fingerprints of an applicant for a license on forms approved and furnished by the Texas Department of Public Safety and shall immediately deliver them to the commission.

ARTICLE 6. RACETRACK LICENSES

SECTION 6.01. LICENSE REQUIRED. A person may not conduct a race meeting with wagering on its results without a racetrack license.

SECTION 6.02. CLASSIFICATION OF TRACKS. (a) Racetracks are classified as class 1 racetracks, class 2 racetracks, and class 3 racetracks.

(b) A class 1 racetrack is a racetrack on which racing is conducted for a minimum of 45 days during a calendar year, the number of days and the actual dates to be determined by the commission under Article 8 of this Act.

(c) A class 2 racetrack is a racetrack on which racing is conducted for a number of days not to exceed 44 days during a calendar year, the number of days and the actual dates to be determined by the commission under Article 8 of this Act.

(d) A class 3 racetrack is a racetrack operated by a county or a nonprofit fair under Article 11 of this Act.

SECTION 6.03. APPLICATION. (a) The commission shall require each applicant for a racetrack license or renewal license to submit an application, on a form prescribed by the commission, containing the following information:

(1) the full name of the applicant and, if the applicant is a corporation, the state under which it is incorporated and the names and addresses of the corporation's agents for service of process in this state;

(2) if the applicant is a corporation, the names and addresses of its directors and stockholders and, if an association, the names and addresses of its members;

(3) the exact location at which a race meeting is to be conducted;

(4) if the racing plant is in existence, whether it is owned by the applicant and, if leased to the applicant, the name and address of the owner and, if the owner is a corporation, the names and addresses of its directors, stockholders, and agents for service of process in this state and, if construction of the plant has not been initiated, whether it is to be owned by the applicant and, if it is to be leased to the applicant,

the name and address of the prospective owner and, if the owner is a corporation, the names and addresses of its directors, stockholders, and agents for service of process in this state;

- (5) a detailed statement of the assets and liabilities of the applicant;
- (6) the kind of racing to be conducted and the dates requested;
- (7) proof of residency as required by Section 6.06 of this article;
- (8) copies of all management and concession contracts dealing with the proposed licenses at the proposed location in which the applicant has an interest; the applicant or licensee shall advise the commission of any change in any management and concession contract; all management and concession contracts must have prior approval of the commission; and

- (9) any other information required by the commission.

- (b) The application must be sworn to by the applicant or, if a corporation or association, by its chief executive officer.

- (c) The application for an original racetrack license must be accompanied by an application fee in the form of a cashier's check or certified check.

- (d) The minimum application fee is \$15,000 for a class 1 racetrack, \$7,500 for a class 2 racetrack, and \$2,500 for a class 3 racetrack. Using these minimums, the commission by rule shall establish a schedule of application fees for the various types and sizes of racing facilities.

SECTION 6.04. ISSUANCE OF LICENSE; BOND. (a) Subject to Article 15 of this Act, the commission may issue a racetrack license to a qualified person if it finds that the conduct of race meetings at the proposed tract and location will be in the public interest, complies with all zoning laws, and complies with this Act and rules adopted by the commission.

- (b) Before issuance of a license under this article, the applicant must give a bond in the sum of \$20,000 payable to the state, with a surety or sureties approved by the commission, conditioned on compliance with this Act and rules adopted under this Act.

SECTION 6.05. CONSTRUCTION NOT TO PRECEDE ISSUANCE. The commission may not issue a racetrack license to a person who has begun construction or preparation of a track or surrounding structures before applying to and receiving from the commission approval to begin construction at a designated site. This restriction does not apply to structures under construction or completed by April 30, 1983.

SECTION 6.06. RACETRACK LICENSES; GROUNDS FOR DENIAL, REVOCATION, AND SUSPENSION. (a) To preserve and protect the public health, welfare, and safety, the commission shall make rules relating to applications, renewal applications, and the financial responsibility, moral character, and ability of applicants, and relating to all things having to do with the plans, construction, and operation of racetracks. The commission may refuse to issue any original or renewal racetrack license or may revoke or suspend the license if it has reasonable grounds to believe and finds that:

- (1) the applicant has been convicted in a court of competent jurisdiction of a violation of this Act or any rule adopted by the commission or aids, abets, or conspires with any person to commit any such violation;

- (2) the applicant has been convicted of a felony or of any crime involving moral turpitude that is reasonably related to his present fitness to hold a license under this Act;

- (3) the applicant has violated or caused to be violated this Act or a rule of the commission that involves moral turpitude, as distinguished from a technical violation of this Act or of a rule;

- (4) the applicant is unqualified, by experience or otherwise, to perform the duties required of him;

(5) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(6) the applicant fails to disclose the true ownership or interest in a horse as required by the rules of the commission;

(7) the applicant is indebted to the state for any fees or payment of penalty imposed by this Act or by rule of the commission;

(8) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

(9) the applicant has not yet attained the minimum age necessary to purchase alcoholic beverages in this state;

(10) the applicant is in the habit of using alcoholic beverages to excess or is mentally incapacitated;

(11) the applicant is excludable from a track enclosure under Article 12 or 13 of this Act;

(12) the applicant has not been a United States citizen residing in this state for a period of 10 consecutive years immediately preceding the filing of his application;

(13) the applicant has improperly used a license certificate, credential, or identification card issued under this Act;

(14) the applicant is residentially domiciled with a person whose license has been revoked for cause within the 12 months immediately preceding the date of his present application;

(15) the applicant has failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises for which the permit is sought are located; or

(16) the applicant is engaged in activities or practices that the commission finds are detrimental to the best interests of the public and the sport of horse racing.

(b) Subsection (a) of this section applies to a corporation or any other organization or group whose application is comprised or more than one person if:

(1) any director, officer, or incorporator is disqualified under Subsection (a) of this section; or

(2) a stockholder, or any member of a group of stockholders acting in concert, having the power to elect or cause the election of a director or officer, is disqualified under Subsection (a) of this section.

(c) A person who is an owner, partner, or member of an association, or a director or stockholder of a corporation, or a person related within the second degree by consanguinity or affinity to a person who is an owner, partner, or member of an association, or a director or stockholder of a corporation, that has any ownership interest in a racetrack may not enter a horse in any race at any racetrack in which he has an interest or wager or cause a wager to be placed at any racetrack in which he has an interest.

(d) A license for operation of a class 1 or class 2 racetrack may not be issued to a corporation unless the corporation is incorporated under the laws of this state and all of the stock of the corporation is owned at all times by individuals who meet the qualifications prescribed by this section for individual applicants.

(e) Partnerships, firms, and associations applying for licenses must be composed wholly of citizens possessing the qualifications enumerated in this section for individual applicants. A corporation holding a license to operate a racetrack under this Act that violates this subsection is subject to forfeiture of its charter, and the attorney general, when any such violation is called to his attention, shall file suit for cancellation of the charter and revocation of the license issued under this Act in a district court of Travis County. Subterfuge in the operation of a racetrack shall be prevented, and this Act shall be liberally construed to carry out this intent.

(f) The commission may condition the issuance of a license on the observance of its rules and may amend the rules at any time and condition the continued holding of the license on compliance with the rules.

(g) A person may not hold an interest in more than one racetrack licensed under this Act.

SECTION 6.07. LEASE. (a) The commission may adopt rules to authorize an association, as lessee, to contract for the lease of a racetrack and the surrounding structures.

(b) The commission may not approve a lease if:

(1) it appears that the lease is a subterfuge to evade Section 6.05 or 6.06 of this article;

(2) the racetrack and surrounding structures do not conform to the rules adopted under this Act; or

(3) the lessee or prospective lessee is disqualified from holding a racetrack license.

SECTION 6.08. RACETRACK SPECIFICATIONS. The commission by rule may determine specifications for racetracks.

SECTION 6.09. DEDUCTION FROM PARI-MUTUEL POOL; ALLOCATION. (a) An association shall deduct from each pari-mutuel pool 15 percent of the amount of the pool, plus breakage, which shall be allocated as follows:

(1) five percent of the pool to the state;

(2) five percent of the pool to the association as its commission;

(3) five percent of the pool for purses; and

(4) the breakage for purse supplements, breeders' awards, and stallion awards.

(b) The state's portion of the pool shall be collected by the comptroller immediately after each race.

(c) The breakage shall be retained by the commission in a bank account for distribution for the authorized purposes.

SECTION 6.10. NOT TRANSFERABLE. (a) A racetrack license is not transferable.

(b) In the event of the death of any person whose death causes a violation of the licensing provisions of this Act, the commission may issue a temporary license for a reasonable time under rules adopted by the commission.

SECTION 6.11. FINANCIAL DISCLOSURE. (a) The commission by rule shall require that each association holding a license for a class 1 or class 2 racetrack file with the commission annually a detailed financial statement containing the names and addresses of all stockholders and indicating compliance with Section 6.06 of this article during the filing period and any other information prescribed by the commission.

(b) Every transaction involving an acquisition or a transfer of a pecuniary interest in the association must receive prior approval from the commission.

SECTION 6.12. RACING RESTRICTED TO DESIGNATED PLACE. An association may not conduct horse racing at any place other than the place designated in the license except as provided by this section or Section 6.13 of this article. However, if the racetrack or enclosure designated in the license becomes unsuitable for racing because of fire, flood, or other catastrophe, a race meeting or any remaining portion may be conducted temporarily at any other racetrack or place within the county designated by the commission.

SECTION 6.13. RACING AT TEMPORARY LOCATION. After an association has been granted a license to operate a racetrack, and prior to the completion of construction at the designated place for which the license was issued, the commission may, on application by the association, issue a temporary license for the association to conduct races at a location in the same county for a period to expire in two years or on the completion of the permanent facility, whichever

occurs first. The commission may set the conditions and standards for issuance of a temporary license and allocation of appropriate race days.

SECTION 6.14. EMPLOYMENT OF FORMER COMMISSION EMPLOYEES. An association may not employ any person who has been a member or an employee employed by the commission in a position in the state employment classification plan of grade 12 or above, or any person related within the second degree by consanguinity or affinity to the member or employee, during the two-year period immediately preceding the employment by the association.

SECTION 6.15. CITY AND COUNTY FEES. (a) A commissioners court may collect a fee not to exceed five percent of the amount paid as admission to a licensed racetrack located within the county. The court may collect an additional fee not to exceed five percent of the amount paid as admission to a licensed racetrack located within the county for allocation among the incorporated cities or towns in the county. The court shall collect the additional fee if requested to do so by the governing bodies of a majority of the incorporated cities and towns in the county. Allocation of the fees shall be based on the population of the cities or towns.

(b) The commissioners court, by order, may establish procedures for the collection of the fees under Subsection (a) of this section. The procedures may require a person holding a racetrack license to keep records and file reports considered necessary by the commissioners court.

ARTICLE 7. OTHER LICENSES

SECTION 7.01. LICENSE REQUIRED. A person may not participate in horse racing with pari-mutuel wagering as regulated by this Act without first obtaining a license from the commission.

SECTION 7.02. LICENSED ACTIVITIES. The horse owners, stewards, trainers, horse jockeys, apprentice jockeys, jockey agents, horseshoe inspectors, placing judges, patrol judges, horse identifiers, starters, veterinarians, horseshoers, stable foremen, stable agents, exercise boys, valets, grooms, pari-mutuel employees, concessionaires, and all other persons involved in any capacity with horse racing with pari-mutuel wagering, other than as spectators, as regulated by this Act are subject to the licensing provisions of this article.

SECTION 7.03. ISSUANCE. The commission shall issue a license to a qualified person on application and payment of the license fee.

SECTION 7.04. LICENSES; GROUNDS FOR DENIAL, REVOCATION, AND SUSPENSION. The commission may refuse to issue any original or renewal license under this article or may revoke or suspend the license if it has reasonable grounds to believe and finds that:

(1) the applicant has been convicted in a court of competent jurisdiction of a violation of this Act or any rule adopted by the commission or aids, abets, or conspires with any person to commit any such violation;

(2) the applicant has been convicted of a felony or of any crime involving moral turpitude that is reasonably related to his present fitness to hold a license under this Act;

(3) the applicant has violated or caused to be violated this Act or a rule of the commission that involves moral turpitude, as distinguished from a technical violation of this Act or of a rule;

(4) the applicant is unqualified, by experience or otherwise, to perform the duties required of him;

(5) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(6) the applicant fails to disclose the true ownership or interest in a horse as required by the rules of the commission;

(7) the applicant is indebted to the state for any fees or payment of penalty imposed by this Act or by rule of the commission;

(8) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

(9) the applicant is in the habit of using alcoholic beverages to excess or is mentally incapacitated;

(10) the applicant is excludable from a track enclosure under Article 12 or 13 of this Act;

(11) the applicant is not a United States citizen or has not been a resident of this state for a period of three consecutive years immediately preceding the filing of his application;

(12) the commission determines that the applicant has improperly used a license certificate, credential, or identification card issued under this Act;

(13) the applicant is residually domiciled with a person whose license has been revoked for cause within the 12 months immediately preceding the date of his present application;

(14) the applicant has failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises for which the permit is sought are located; or

(15) the applicant is engaged in activities or practices that are detrimental to the best interests of the public and the sport of horse racing.

SECTION 7.05. LICENSE FEES. The commission shall by rule prescribe a fee schedule for licenses issued under this article based on the relative or comparative incomes or property interests of the various categories of licensees, with the lower income category of licensees being charged nearer the minimum fee and the higher income category of licensees charged nearer the maximum fee.

SECTION 7.06. FORM OF LICENSE. The commission shall issue a license certificate under this article in the form of an identification card with photograph and fingerprints.

SECTION 7.07. TERM OF LICENSE. A license issued under this article is valid during the calendar year for which it is issued. It is renewable on application and payment of the fee in accordance with the rules of the commission.

SECTION 7.08. VALID THROUGHOUT STATE. A license issued under this article is valid at all race meetings conducted in this state.

SECTION 7.09. TEMPORARY LICENSES. Pending investigation of an applicant's qualifications to receive an original or renewal license, the commission may issue a temporary license to an applicant under this article whose application appears to comply with the requirements of law and who has paid the necessary fee. The temporary license is valid for a period not to exceed 90 days from the date of issuance.

ARTICLE 8. ALLOCATION OF RACING DAYS

SECTION 8.01. ALLOCATION. The commission shall allocate the racing days for the conduct of racing at each racetrack licensed under this Act. An equal number of race days shall be allocated for both Thoroughbred and quarter horse races. Races may not be conducted under this Act on Sunday if so determined by the commission.

SECTION 8.02. CHARITY DAYS. The commission by rule may grant not more than five additional days of racing, to be conducted as charity days, to each association during any race meeting.

ARTICLE 9. HORSE REGISTRATION; RACING

SECTION 9.01. TEXAS-BRED HORSES. The state breed registry shall make reasonable rules to establish the qualifications of accredited Texas-bred horses to promote, develop, and improve the breeding of horses in this state.

SECTION 9.02. BREED REGISTRIES. The officially designated state breed registries for accredited Texas-bred horses are the Texas Thoroughbred Breeders Association for Thoroughbred horses and the Texas Quarter Horse Association for

quarter horses. Others shall be determined by the commission with the advice of the national breed registry.

SECTION 9.03. TEXAS-BRED RACE. An association shall provide for the running of races limited to accredited Texas-bred horses, each to be known as a Texas-bred race. On every racing day, an association shall provide for the running of at least two races limited to accredited Texas-bred horses. However, if on any day not enough starters are entered in this class to provide sufficient competition, an association may, with the approval of the commission, eliminate those races and provide substitute races. Any Texas-bred horse that is eligible under the conditions of the substitute race shall be preferred. To encourage the breeding of horses in this state, any accredited Texas-bred horse finishing first, second, or third in a Texas-bred race shall receive a purse supplement.

SECTION 9.04. TEXAS BREEDERS' AWARDS. Because one of the purposes of this Act is to encourage agriculture and the horse-breeding industry, when an accredited Texas-bred horse finishes first, second, or third in any Texas-bred race or first in a race other than a Texas-bred race, the breeder shall receive a sum, not to be deducted from the purse, equal to 10 percent of the earned portion of the purse, excluding stakes, to be distributed as determined by the state breed registry; and the owner of the stallions whose get finish first, second, or third in any Texas-bred race or first in a race other than a Texas-bred race shall receive a sum equal to two percent of the earned portion of the purse, excluding stakes, to be distributed as determined by the state breed registry. The state breed registry shall maintain and supply complete records showing awards earned, received, and distributed.

SECTION 9.05. FUNDS FOR AWARDS. Funds for the awards and purse supplements shall be derived from the breakage described by Section 6.09(a)(4) of this Act.

SECTION 9.06. TYPES OF RACING. When an association runs both quarter horse and Thoroughbred races at one track, the number of races to be run by each breed shall be equal. The commission may, by rule or by decision, allow for exceptions if not enough horses of either breed are stabled on the grounds of a racetrack to provide sufficient competition.

SECTION 9.07. STABLING. If an association conducts quarter horse and Thoroughbred racing on the same days, it shall provide stalls on an equitable basis as provided by rule of the commission.

SECTION 9.08. SECURITY. The association shall provide security at its track that is considered by the commission to be equivalent or superior to that provided by the Thoroughbred Racing and Protective Bureau.

ARTICLE 10. WAGERING

SECTION 10.01. PARI-MUTUEL WAGERING; RULES. The commission shall adopt rules to regulate wagering on horse races under the system known as pari-mutuel wagering. Wagering may be conducted only by an association within its enclosure during a race meeting.

SECTION 10.02. TOTALIZATOR. The wagering may be operated only by a totalizator or other mechanical equipment approved by the commission. The commission may not require a particular make of mechanical equipment.

SECTION 10.03. INFORMATION ON TICKET. The commission shall by rule prescribe the information to be printed on each pari-mutuel ticket.

SECTION 10.04. WAGERING INSIDE ENCLOSURE. Only a person inside the enclosure where a race meeting is authorized may wager on the result of a horse race held at that meeting by contributing his money to the pari-mutuel pool operated by the association. The commission shall adopt rules to prohibit wagering by employees of the commission and by persons licensed under this Act.

SECTION 10.05. UNLAWFUL WAGERING. A person may not wager on the result of a horse race in this state except as permitted by this Act.

SECTION 10.06. MINORS. The commission shall adopt rules to prevent wagering by persons who have not yet attained the minimum age required to purchase alcoholic beverages in this state and to prevent persons under 16 years of age from entering the viewing section of a racetrack unless accompanied by the person's parent or legal guardian.

SECTION 10.07. CLAIM AFTER RACE MEETING. (a) A person who claims to be entitled to any part of a redistribution from a pari-mutuel pool and who fails to claim the money due him prior to the completion of the race meeting at which the pool was formed may, not later than the 60th day after the closing day of the meeting, file the following with the commission:

- (1) a verified claim on a form prescribed by the commission; and
- (2) a substantial portion of the pari-mutuel ticket sufficient to identify the association, race, and horse involved, and sufficient to show the amount wagered and the type of ticket (win, place, or show).

(b) If the claimant satisfactorily establishes his right to redistribution from the pool, the commission shall order the association to pay the amount due the claimant.

SECTION 10.08. REDISTRIBUTABLE MONEY NOT CLAIMED. Not later than the 90th day after the closing day of a race meeting, an association shall pay to the commission all redistributable money in a pari-mutuel pool that is subject to payment to a claimant under Section 10.07 of this Act but that is not successfully claimed.

ARTICLE 11. FAIRS, STOCK SHOWS, AND EXPOSITIONS

SECTION 11.01. COUNTY STOCK SHOWS. Subject to the licensing requirements and other provisions of this Act, a county may conduct an annual race meeting, not to exceed 14 racing days, in connection with a livestock show or exhibit that is held under Chapter 20, Acts of the 43rd Legislature, 4th Called Session, 1934 (Article 2372d, Vernon's Texas Civil Statutes), or Chapter 411, Acts of the 51st Legislature, Regular Session, 1949 (Article 2372d-2, Vernon's Texas Civil Statutes). The race meetings may be conducted by an agent selected by the commissioners court under Chapter 49, Acts of the 52nd Legislature, Regular Session, 1951 (Article 2372d-3, Vernon's Texas Civil Statutes), if the agent is qualified to hold a license under this Act.

SECTION 11.02. FAIRS. Subject to the licensing requirements and other provisions of this Act, a nonprofit corporation organized under Subdivision 7, Article 1302, Revised Statutes, or organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), for the same purposes, may conduct a race meeting, not to exceed 14 racing days.

ARTICLE 12. EXCLUSION OR EJECTION FROM RACETRACK

SECTION 12.01. COMMISSION SHALL REGULATE. The commission shall adopt rules providing for the exclusion or ejection from an enclosure where horse races are conducted, or from specified portions of an enclosure, of a person:

- (1) who has engaged in bookmaking, touting, or illegal wagering;
- (2) whose income is from illegal activities or enterprises;
- (3) who has been convicted of a violation of this Act;
- (4) who has been convicted of theft;
- (5) who has been convicted under the penal law of another jurisdiction for the commission of an act that would have constituted a violation of any of the laws mentioned in this section;
- (6) who has committed a corrupt or fraudulent act in connection with horse racing or pari-mutuel wagering or who has committed any act tending or intended to corrupt horse racing or pari-mutuel wagering in this state or elsewhere;
- (7) who is under suspension or ruled off of a racetrack by the commission or a steward in this state or by a corresponding authority in another state because of fraudulent or corrupt practices or other acts detrimental to racing;

(8) who has submitted a forged pari-mutuel ticket or has altered or forged a pari-mutuel ticket for encashment, or who has cashed or caused to be cashed an altered, raised, or forged pari-mutuel ticket;

(9) who has been convicted of committing a lewd or lascivious act or other crime involving moral turpitude;

(10) who is guilty of boisterous or disorderly conduct while inside a racing enclosure;

(11) who is an agent or habitual associate of a person excludable under this section; or

(12) who has been convicted of a felony.

SECTION 12.02. HEARING; APPEAL—EXCLUSION OR EXPULSION FROM AN ENCLOSURE. (a) A person who is excluded or ejected from an enclosure under a rule of the commission may apply to the commission for a hearing on the question of the applicability of the rule to that person.

(b) The commission shall hold the hearing not later than the 10th day after receipt of the application or at another time and place agreed on by the applicant and the commission.

(c) If the commission determines that the rule does not or should not apply to the applicant, it shall make and enter an order to that effect in its minutes and shall notify each association of that fact. If the commission determines that the exclusion or ejection was proper under the rules, it shall make and enter an order to that effect in its minutes and the person shall continue to be excluded from each association.

(d) The applicant may appeal an adverse decision of the commission by filing not later than the 30th day after the date of the decision a petition to set aside the decision in a district court of the county of his residence or in Travis County. The appeal is by trial de novo as that term is used in appeals from a justice court to a county court.

(e) The judgment of the court may be appealed as in other civil cases. The person appealing the commission's ruling under this article shall continue to be excluded from all enclosures in this state during the pendency of the appeal.

SECTION 12.03. ENTRY AFTER EJECTION. (a) A person who has been excluded or ejected from an enclosure under this article commits an offense if the person knowingly enters an enclosure of the same or other licensed racetrack unless the commission or a final judgment of a court has ordered that the rule does not apply to the person.

(b) An offense under this section is a Class A misdemeanor.

(c) The provisions of Section 7.22, Penal Code, imposing criminal responsibility on a corporation or association for an offense committed by its agent apply to conduct constituting an offense under this section that is performed by an agent of a corporation or association.

ARTICLE 13. TOUTING AND OTHER OFFENSES

SECTION 13.01. TOUTING. (a) A person commits an offense if the person conveys or offers to convey false information about a horse race to others for compensation.

(b) Except as provided by Subsection (c) of this section, an offense under this section is a felony of the third degree.

(c) An offense under this section is a felony of the second degree if:

(1) the actor knowingly represents that an official or employee of the commission or of an association or an owner, trainer, jockey, or other person licensed by the commission is the source of his information; or

(2) the actor previously has been finally convicted of an offense under this section; probation and deferred adjudication constitute a final conviction.

(d) The provisions of Section 7.22, Penal Code, imposing criminal responsibility on a corporation or association for an offense committed by its agent

apply to conduct constituting an offense under this section that is performed by an agent of a corporation or association.

SECTION 13.02. UNLAWFUL USE OF CREDENTIAL. (a) A person commits an offense if the person displays a license or credential that has been issued or purports to have been issued by the commission and represents that the person is the holder of the license or credential when the person knows that the license or credential is not issued to the person or if the person impersonates in any way a person holding a license or credential issued by the commission.

(b) An offense under this section is a felony of the third degree.

(c) The provisions of Section 7.22, Penal Code, imposing criminal responsibility on a corporation or association for an offense committed by its agent apply to conduct constituting an offense under this section that is performed by an agent of a corporation or association.

SECTION 13.03. ILLEGAL INFLUENCE OF RACE OUTCOME. (a) The commission shall adopt rules prohibiting the illegal influencing of the outcome of a race, including, but not limited to, the use of medication, stimulants, or depressants to attempt to or to influence illegally the outcome of a race.

(b) A person who knowingly violates a rule adopted under this section may be barred for a time determined by the commission or for life from receiving any license under this Act or may be barred for a time determined by the commission or for life from any premises licensed under this Act, or both.

(c) A person who knowingly violates a rule adopted under this section commits a felony of the third degree for the first offense and a felony of the second degree for a second or subsequent offense.

ARTICLE 14. GENERAL PENALTY PROVISIONS

SECTION 14.01. GENERAL PENALTY. (a) A person commits an offense if the person violates a provision of this Act for which a specific penalty is not provided.

(b) An offense under this section is a felony of the third degree.

SECTION 14.02. PERSON DEFINED. In each section of this Act prescribing a criminal offense, "person" has the meaning assigned by the Penal Code.

ARTICLE 15. MISCELLANEOUS PROVISIONS

SECTION 15.01. APPLICATION OF SUNSET ACT. The Texas Horse Racing Commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1995.

SECTION 15.02. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. Except as otherwise provided by this Act, the commission rules and orders are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 15.03. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Lyon, Floor Amendment No. 10 was tabled by the following vote: Yeas 25, Nays 6.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Truan, Whitmire, Williams.

Nays: Leedom, Sims, Traeger, Uribe, Vale, Washington.

(Senator Caperton in Chair)

(Senator Brooks occupied the Chair during discussion of the passage of the bill to engrossment.)

Question - Shall the bill as amended be passed to engrossment?

GUEST OF SENATE

The Presiding Officer, Senator Brooks in the Chair, presented to the Senate the First Lady of Texas, Mrs. Linda Gale White.

Mrs. White was welcomed by the Members of the Senate.

COMMITTEE SUBSTITUTE SENATE BILL 440 ON SECOND READING

The Senate resumed consideration of the pending business, the same being the passage of C.S.S.B. 440 on its second reading and passage to engrossment.

Question - Shall the bill as amended be passed to engrossment?

(President in Chair)

The bill as amended was passed to engrossment by the following vote: Yeas 17, Nays 13.

Yeas: Brooks, Doggett, Glasgow, Harris, Kothmann, Lyon, Mauzy, McFarland, Santiesteban, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire.

Nays: Blake, Brown, Caperton, Edwards, Farabee, Howard, Jones, Leedom, Montford, Parker, Parmer, Sarpalius, Williams.

Absent: Henderson.

MOTION TO PLACE COMMITTEE SUBSTITUTE SENATE BILL 440 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 440 be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 18, Nays 11. (Not receiving four-fifths vote of the Members present)

Yeas: Brooks, Doggett, Farabee, Glasgow, Harris, Kothmann, Lyon, Mauzy, McFarland, Parker, Santiesteban, Sharp, Sims, Traeger, Truan, Uribe, Vale, Whitmire.

Nays: Blake, Brown, Caperton, Edwards, Howard, Jones, Leedom, Montford, Parmer, Sarpalius, Williams.

Absent: Henderson, Washington.

MEMORIAL RESOLUTIONS

H.C.R. 155 - (Uribe): Memorial resolution for Frank Joseph.

S.R. 511 - By Traeger: Memorial resolution for Teodoro "Ted" Flores, Sr.

WELCOME AND CONGRATULATORY RESOLUTIONS

H.C.R. 150 - (Sarpalius): Extending congratulations to Sarah Etta Willard.

H.C.R. 164 - (Lyon): Extending congratulations to Irving Louis Friedman.

H.C.R. 167 - (Edwards): Extending congratulations to the Ennis High School girl's basketball team.

H.C.R. 168 - (Edwards): Commending the Waxahachie High School boy's basketball team.

H.C.R. 169 - (Edwards): Commending the Maypearl High School boy's basketball team.

S.R. 491 - By Sharp: Extending welcome to Stella Adame.

S.R. 492 - By Sharp: Extending welcome to Natalie Sanchez.

S.R. 493 - By Sharp: Extending welcome to Patricia Saenz.

S.R. 494 - By Sharp: Extending welcome to Cindy Garcia.

S.R. 495 - By Sharp: Extending welcome to Selina Muniz.

S.R. 496 - By Sharp: Extending welcome to Evelyn Farias.

S.R. 497 - By Sharp: Extending welcome to Rhonda Gonzalez.

S.R. 498 - By Sharp: Extending welcome to Debby Barrera.

S.R. 499 - By Sharp: Extending welcome to Yvonne Garza.

S.R. 500 - By Sharp: Extending welcome to Delma Zapata.

S.R. 501 - By Sharp: Extending welcome to Becky Armendariz.

S.R. 502 - By Sharp: Extending welcome to Betty Louise Olivares.

S.R. 503 - By Sharp: Extending welcome to Melinda Maxine Cortez.

S.R. 504 - By Sharp: Extending welcome to Irma Linda Ybarra.

S.R. 505 - By Sharp: Extending welcome to Andriana Gomez.

S.R. 506 - By Sharp: Extending welcome to Michelle Zepeda.

S.R. 507 - By Sharp: Extending welcome to Sandra Mesa.

S.R. 508 - By Sharp: Extending welcome to Yvonne Fuentes.

S.R. 509 - By Sharp: Extending welcome to Brenda Lee Martinez.

S.R. 510 - By Sharp: Extending congratulations to Dr. and Mrs. Bruce Golemon.

ADJOURNMENT

On motion of Senator Mauzy, the Senate at 3:14 o'clock p.m. adjourned until 11:00 o'clock a.m. Monday, April 25, 1983.

APPENDIX

Signed by Governor
(April 20, 1983)

S.C.R. 53

S.C.R. 14

S.C.R. 16

S.C.R. 17

S.C.R. 18

H.C.R. 145